

ICC CONSIDERATION OF RAILROAD LINE SALES

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 816 and S. 1026

TO AMEND TITLE 49, UNITED STATES CODE, RELATING TO THE
CONSTRUCTION, ACQUISITION, OR OPERATION OF RAIL CARRIERS,
AND FOR OTHER PURPOSES

S. 1040

TO AMEND TITLE 49, UNITED STATES CODE, RELATING TO SALE,
ACQUISITION, OR ABANDONMENT OF RAILROAD LINES

OCTOBER 20, 1987

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ICC CONSIDERATION OF RAILROAD LINE SALES

TUESDAY, OCTOBER 20, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room SR-253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel; Sheryl Webber Washington, professional staff member; and Alan Manesss, minority staff counsel.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The subcommittee will please come to order. This morning the Surface Transportation Subcommittee will conduct a hearing on railroad line sales.

It is a very important matter that we have addressed in the past. We are going to be addressing it more in the future.

We will look at the Interstate Commerce Commission's review of the line sales to short line and regional railroads. We will also examine legislative proposals to modify the way in which the ICC considers sales.

Bills that we will examine include S. 816, S. 1026, S. 1040, proposals introduced by my colleagues, Senators Baucus, Burdick, and Melcher. We thank each and every one of them for their attention and interest in this particular difficult matter.

Since 1980, almost 200 new short line and regional railroads have begun operation. Many of these represent lines that were subject to potential abandonment by class one railroads, and may well mean the continuation of service for shippers and jobs for rail workers. But it also might jeopardize those same railroad workers' positions.

The development of regional and short line railroads has not been without controversy. Labor is particularly concerned over the ICC's failure to impose labor protective conditions on line sales, and that these transactions are being used to get around established collective bargaining agreements.

In addition, while many shippers appear to be satisfied with the quality of service that they receive in the regional and short line roads, some concerns have been expressed regarding the smaller carrier's ability to continue operations in an economic downturn.

With the situation that we have had as of yesterday with the stock market, that only puts an exclamation point on that difficult situation.

Also, we are seeing transactions of larger size take advantage of expedited procedures. At the ICC, States and communities are starting to express concerns about the uncertainty that can accompany large-scale changes in the terms of the workforce, pay and service.

Today's hearing is also an important one from the perspective of the state that I represent. Nebraska farmers and others are dependent upon quality rail service to ensure access to ports and foreign markets.

This why I am particularly interested in transactions such as the Burlington Northern's proposed sale of an 830 mile long segment of track in Montana, since this route represents one of the possible means for Nebraska agricultural products to get to market.

Such transactions show the inter-related nature of our rail transportation system and why few of these transactions can be viewed as purely local in nature and in impact.

I just want to add to these comments the fact that I happened to be in Montana over this last weekend. And on Sunday afternoon I held a listening session. Some people call them town hall meetings. I have always referred to them as listening sessions, to get the input of the people that are affected.

I want to tell you that there were over 300 people that work for the Burlington Northern at that meeting. There were grave concerns expressed, and there were particularly points made that I made extensive note of that I hope that we can get some of these matters clarified with this hearing today.

I just want to state from my perspective, as chairman of this subcommittee, I have not taken a stand yet as to whether or not the Burlington Northern sale or proposed sale should go forward to the new regional operator.

I do not have enough facts to know whether that is fair or whether it is good, or whether it is the thing to do. I am very much concerned, however, about what I think is the major concern of my colleagues from Montana, Senator Melcher and Senator Baucus, who I am going to ask to testify in just a moment. Their concern and mine is that this matter is going through on such a fast track that no one seems to know what the impact is going to be.

Once again, I think we find ourselves somewhat in conflict and disarray, and maybe dismay at the actions of the Federal regulators in this particular matter. These regulators seem not to have taken the time needed for review, from the information that we have, before they give the stamp of approval, as mandated by the Staggers Act and previous precedents.

So there are a lot of questions. We hope we can get some of them answered today. I will ask my distinguished colleague from West Virginia if he has any opening statement.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Just a brief one, Mr. Chairman. As always, I compliment you on your undertaking today. You are

going to have a very comprehensive review of railroad line sales and the actions by the Interstate Commerce Commission to accomplish these sales.

As you know, Mr. Chairman, I have focused my attention and energies towards the correction of a very serious problem for shippers and consumers, and also the ICC implementation of the captive shipper protection aspect of the Staggers Rail Act in rate reasonableness proceedings. Senator Melcher testified at a previous hearing on that subject.

Mr. Chairman, your and my respective staff members are currently in discussion about how to proceed with legislation in that area, based on a very excellent record that was developed on committee hearings compiled in June.

The problem remains, in my judgment, seven years after the passage of the Staggers Rail Act the ICC has failed to implement a fair, predictable and expedient test of rate reasonableness to address the concerns of captive shippers.

By apparent contrast, Mr. Chairman, in the area of line sales, the ICC's record is one of absolute expediency. But perhaps this expediency is to a fault. There is no question that line sales are a regular and important part of the railroad map of the 1980's.

Indeed, there are short lines operating quite effectively in my State, and I am hopeful that we can reverse CSX's proclivity for abandonment by intelligent short line development.

Mr. Chairman, it seems to me that the common thread of my concern about rates and other concerns about rate rail lines sales is that in both the ICC has failed to fulfill the full job that Congress gave it.

Congress did not want to impede railroad entry by way of line sales. But it also intended for the public interest to be served. Congress intended review in cases where questions might exist about the future of railroad service or the impact such sale might have on employment.

I doubt this can occur where the ICC makes only rubber stamp review of virtually every line sale, no matter how large and far-reaching it might be.

Mr. Chairman, I share your interest and concern about this matter, and your leadership, as always, is sound and aggressive.

Senator EXON. Thank you very much, Senator Rockefeller.

Senator Adams, do you wish to make a statement at this time?

OPENING STATEMENT BY SENATOR ADAMS

Senator ADAMS. Mr. Chairman, thank you for holding these hearings on an issue of great importance to the railroad industry. The advent and growth of many short line and regional railroads in the past several years has been one of the most visible results of deregulation in the industry.

I am certainly encouraged to see entrepreneurs taking an interest in new railroad entities. I do not believe, however, that the shortline phenomenon is without its costs.

As we listen to the testimony here today I believe that we will be hearing two very different stories. On the one hand, the railroads and the ICC cite the shortlines as a free-market success story.

Lines that might have been abandoned are continued in operation, benefiting the shippers, the employees and the communities.

On the other hand, it appears that many of the benefits of deregulation have come at the expense of employees. In this case, I am concerned that the ICC's handling of shortline sales has allowed many trunk lines to evade their obligations under collective bargaining agreements with labor, while retaining all the traffic on their main lines.

I hope that this hearing will provide us with the facts on these sales and the information we need to develop clear and effective policies in this area.

What is clear to me is that the ICC has abandoned its statutory mandate to regulate the industry in accordance with our national transportation policy. The ICC has expanded its authority to exempt transactions of limited scope into a class exemption that appears to allow any and all railroad sales, with no significant investigation.

Just recently, the ICC removed the stay placed on the sale and transfer of the Milwaukee Road property by the Soo Line Railroad, involving some 1,900 miles of track and facilities in four States. The ICC also gave its rubber-stamp approval to the sale of an entire railroad, the Pittsburgh & Lake Erie. In neither case was there any evaluation of the competitive issues involved in the transaction, or their impact on affected shippers, communities and employees.

Today, we will be hearing from several witnesses about a proposed sale that has tremendous consequences for the State of Washington—the sale of the Burlington Northern's southern line to the Montana Rail Link. Because of the ICC's rulings, employees of the BN, shippers on that line, and even the States through which the railroad runs, are effectively shut out of the decision-making process, and their concerns are basically ignored.

Mr. Chairman, I have several general concerns that I hope will be addressed today. I believe that the ICC's 7 day rule does not provide adequate notice and opportunity for affected parties to comment. In addition, the information that the buyer and seller are required to submit to the ICC is inadequate to critically evaluate the transaction.

I am concerned that it is impossible to determine whether these short lines will be economically viable. There is evidence that many of these short lines are burdened by restrictive "tie-in" agreements with the trunk lines that limit their access to traffic and their ability to independently set their rates.

In addition, many of these sales seem to be paper transactions, principally designed to avoid employee protection that normally would apply to sales of railroad property.

We have before us, Mr. Chairman, several bills that address the flaws in the ICC's procedures. I look forward to hearing from Senators Baucus and Melcher on their proposals. I also believe that this committee should carefully evaluate and consider legislation to address the concerns of railroad employees. If any adjustments are needed in labor-management relations in the industry, I believe they should be worked out in the collective bargaining process, not through loopholes in the law created by the ICC.

Senator EXON. I also have a statement that the chairman of the committee, Senator Hollings would like to have included in the record.

[The statement and bills follow:]

OPENING STATEMENT BY THE CHAIRMAN

This morning the Subcommittee on Surface Transportation will hold a hearing on the Interstate Commerce Commission's [ICC] consideration of railroad line sales and legislative proposals which seek to modify this process.

There has been significant interest in recent years regarding the proliferation of railroad line sales by Class I carriers to regional and shortline railroads. In part, these sales have allowed for continued railroad service in areas where abandonment may have been the likely alternative.

The subcommittee is today interested in the process used by the ICC to review these line sales. Specifically, the subcommittee wants to hear testimony regarding the application of the ICC's current exemption process to these transactions; proposals under review by the Commission for modification of this procedure; the issue of labor protection as applied by the ICC; and how the process could be affected by possible legislative proposals.

Legislation has been introduced by my colleagues, Senators Baucus, Burdick, Melcher, that proposes in various ways to modify the process for reviewing proposed sales of shortline and regional railroads. They will argue that increased participation is necessary, and possibly limitations on the length of railroad trackage that can be considered under the ICC's expedited review.

I am concerned about the line sale issue because of the impact of these sales on shippers, carriers, rail workers and the communities served by these lines. Concerns have also been raised by rail labor regarding their view that since the passage of the Staggers Act, the ICC has abrogated provisions designed to address the needs of labor when these transactions occur. I am hopeful this hearing will help the Committee determine whether the public interest is being served by the current ICC procedure, and whether changes in the process may in fact bring about a more positive environment in which these railroad line sales can be considered. The witnesses scheduled to testify today should be able to help us as we consider these important issues.

100TH CONGRESS
1ST SESSION

S. 816

To amend title 49, United States Code, relating to the construction, acquisition, or operation of rail carriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 17), 1987

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, relating to the construction, acquisition, or operation of rail carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) clause (1) of subsection (b) of section 10901 of title
4 49, United States Code, is amended to read as follows:

5 “(1) send a copy of the application and all rele-
6 vant agreements (draft or otherwise) between the par-
7 ties relating to any transaction under subsection (a) of
8 this section to the chief executive officer of each State,
9 or such regulatory agency or agencies or the chief ex-
10 ecutive officer shall designate, that would be directly

1 affected by the construction, acquisition, or operation of
2 the railroad line;”.

3 SEC. 2. Section 10901 of title 49, United States Code,
4 is amended by adding at the end of such section the
5 following new subsection:

6 “(f) Upon receipt by a State of an application and any
7 relevant agreement or agreements pursuant to clause (1) of
8 subsection (b) of this section, the chief executive officer, or
9 designated agency or agencies, shall have a period of 30 days
10 immediately following such date of receipt within which to
11 submit a written protest of such application to the Commis-
12 sion. Upon receipt by the Commission of any such protest
13 timely submitted, the Commission shall within 60 days fol-
14 lowing the date of the receipt of such protest, review the
15 proposed transaction to determine whether or not an exemp-
16 tion from review under the authority of section 10505 is ap-
17 propriate. If the Commission finds that the proposed transac-
18 tion does not appropriately fall under the review exemption,
19 the Commission shall proceed to determine whether the
20 present or future public convenience and necessity require or
21 permit the construction or acquisition (or both) and operation
22 of the railroad line.”.

23 SEC. 3. Section 10505 of title 49, United States Code,
24 is amended by adding at the end thereof the following:

1 “(h) The Commission may not exercise its authority
2 under this section to exempt an applicant from the
3 procedures set forth in clause (1) of subsection (b) and
4 subsection (f) of section 10901 of this title.”.

○

100TH CONGRESS
1ST SESSION

S. 1026

To amend title 49, United States Code, relating to the construction, acquisition, or operation of rail carriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 10 (legislative day, MARCH 30), 1987

Mr. BURDICK introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, relating to the construction, acquisition, or operation of rail carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) clause (1) of subsection (b) of section 10901 of title
4 49, United States Code, is amended to read as follows:

5 “(1) send a copy of the application and all rele-
6 vant agreements (draft or otherwise) between the par-
7 ties relating to any transaction under subsection (a) of
8 this section to the chief executive officer of each State,
9 or such regulatory agency or agencies or the chief ex-
10 ecutive officer shall designate, that would be directly

1 affected by the construction, acquisition, or operation of
2 the railroad line;”.

3 SEC. 2. Section 10901 of title 49, United States Code,
4 is amended by adding at the end of such section the following
5 new subsection:

6 “(f) Upon receipt by a State of an application and any
7 relevant agreement or agreements pursuant to clause (1) of
8 subsection (b) of this section, the chief executive officer, or
9 designated agency or agencies, shall have a period of 30 days
10 immediately following such date of receipt within which to
11 submit a written protest of such application to the Commis-
12 sion. Upon receipt by the Commission of any such protest
13 timely submitted, the Commission shall within 60 days fol-
14 lowing the date of the receipt of such protest, review the
15 proposed transaction to determine whether or not an exemp-
16 tion from review under the authority of section 10505 is ap-
17 propriate. Additionally, any interested party may file com-
18 ments with the Commission during this 30-day time period.
19 If the Commission finds that the proposed transaction does
20 not appropriately fall under the review exemption, the Com-
21 mission shall proceed to determine whether the present or
22 future public convenience and necessity require or permit the
23 construction or acquisition (or both) and operation of the rail-
24 road line.”.

1 SEC. 3. Section 10505 of title 49, United States Code,
2 is amended by adding at the end thereof the following:

3 “(h) The Commission may not exercise its authority
4 under this section to exempt an applicant from the
5 procedures set forth in clause (1) of subsection (b) and
6 subsection (f) of section 10901 of this title.”.

○

100TH CONGRESS
1ST SESSION

S. 1040

To amend title 49, United States Code, relating to sale, acquisition, or abandonment of railroad lines.

IN THE SENATE OF THE UNITED STATES

APRIL 10 (legislative day, MARCH 30), 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, relating to sale, acquisition, or abandonment of railroad lines.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 10501 of subchapter I of chapter 105 of title
4 49, United States Code, is amended by adding at the end
5 thereof the following new subsection:

6 “(e) In the administration of the provisions of this title
7 involving the sale, acquisition, or abandonment of any rail-
8 road line or rail transportation subject to the jurisdiction of
9 the Interstate Commerce Commission under subchapter I of
10 chapter 105 of this title, any sale, acquisition, or abandon-

1 ment of a railroad line, rail transportation, trackage, or track-
2 age rights to or by a person who is not a carrier, if the tracks
3 involved in such sale, acquisition, or abandonment exceed
4 100 miles in length, shall be subject to such provisions in the
5 same manner and to the same extent as if such sale, acquisi-
6 tion, or abandonment had involved only rail carriers provid-
7 ing transportation subject to such jurisdiction. In any case
8 involving a sale of a railroad line or any or all of its trackage
9 or trackage rights to a person who is not a carrier, the Inter-
10 state Commerce Commission shall take such action as may
11 be necessary to assure that the level of service to be provided
12 by any such noncarrier acquiring any such railroad line,
13 trackage, or rights will not be substantially less than that
14 provided prior to such sale, and that rates on that particular
15 segment of tracks involved shall not be increased in an
16 amount greater than the increase in the rail cost adjustment
17 factor."

○

Senator EXON. I am very pleased to call upon two of my most valued and closest colleagues in the U.S. Senate, two outstanding Senators from the State of Montana, Senator Melcher and Senator Baucus.

We will begin with Senator Melcher. Senator Melcher, thank you for being here this morning.

**STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM
MONTANA**

Senator MELCHER. Thank you very much, Mr. Chairman, for scheduling this hearing on my bill and other bills that relate to the Interstate Commerce Commission's jurisdiction over the sale of railroad lines.

I think that you touched on it just briefly in your opening remarks, but what is going on in the stock market, of course, has a lot of people looking for some explanations. But we had to anticipate that if you have high Federal deficits and high trade imbalances and low commodity prices, something is wrong. It has been that way for several years.

So what we are looking at this morning is something pretty basic to the underlying economy of the United States, because this gets right back to what we are doing with commodities that we produce out of the Earth and how we are going to transport them to where they are needed for processing and for use.

Of immediate concern is the sale and lease by the Burlington Northern Railroad Company of approximately 800 miles of BN's line running through Montana and Idaho. They are selling it to a new company called Montana Rail Link.

This line runs between Huntley, Montana and Sand Point, Idaho. This line constitutes a major portion of the southern line through Montana.

This is not some little branch line. This is a main line track of what used to be the Northern Pacific, and is a first-class chunk of railroad. The ICC exemption of the sale from review was effective as of July 31 of this past summer, and the actual sale is expected to occur around October 26, just a few days from now.

There are currently six petitions pending before the ICC which request that the exemption granted to the sale of the line to Montana Rail Link be revoked so that the ICC can proceed to conduct an investigation of the sale.

This is not a small sale. It has been stated that the price for this 600 miles plus of main line and a couple of hundred other miles of connecting branch lines has been reported at about \$140 million.

This line is in excellent condition. It has a high level of business. This is not a line that was ever going to be abandoned or ever in trouble. It has long haul freight.

Some of those crews were so busy this summer that the engineers could never get a day off.

That is how high a level of business it has. Burlington Northern has never considered abandonment of this portion of their line, but is selling it for purposes of raising cash and to demonstrate that smaller crews and longer runs to be instituted by the new owners can operate successfully.

If you are Burlington Northern, and you have got all these thousands of miles of first-class profitable railroad lines, selling a 600-mile chunk of line might be good business practice for them if it can demonstrate that you can run trains on main line track and heavy volume, long haul freight, with smaller crews and longer runs.

That practice becomes a big part of the bargaining next year with all the railroad brotherhoods, selling this chunk of line might mean a whole lot to the whole railroad system of Burlington.

What are they risking? What is Burlington risking? Not much. Freight going on or off of this 600 plus miles of main line which is to be sold to Montana Rail Link will go back on the Burlington.

There is little or no competition between them. They will give the freight to Rail Link at Sand Point, or if it is going west, take it

off there at Sand Point, Idaho, or vice versa at Huntley, Montana. They have protected themselves on the interconnection with the UP because they control the gateway. They are not going to lose the freight, they just lose it for a portion of the time and then they pick it up again.

The ICC has made it clear that it supports this trend of selling these lines, though this is one of the biggest chunks of main line that has ever been proposed to be sold, and the ICC is doing everything it can to expedite these transactions.

Administratively, under Ex Parte 392, which exempts a whole class of such transactions, they have exempted sales from ICC reviews if the acquisition of the line is by a non-carrier operator. In this case we have brand new entity—Montana Rail Link—which is owned by Dennis Washington, an entrepreneur of some success and some capability.

If the ICC continues to permit railroad sales of this nature, it will have a significant impact on national transportation policy.

Whether or not the short line phenomenon should be encouraged is a policy decision which should be determined by Congress, by the elected representatives, and not by an agency which is not directly accountable to the people.

I want to reiterate this point. People are pondering what has gone wrong in this economy. Why does the stock market dip like this?

I will tell you. We have a responsibility in setting policy here in Congress.

We should ponder whether we should allow something to happen that we know is contrary to our better judgment.

Now, this is our responsibility. Whatever the ICC does is the responsibility of this committee and its counterpart over in the House.

The ICE contends that it should not have to review sales of small lines because it would be better to let somebody have them if the alternative is that the railroad that owns them is going to abandon them.

That is not the case here. This is a main line sale of a big chunk of railroad, and we should make sure that the ICC does review it. I believe that the blanket exemption which the ICC has granted to sales of railroads to noncarriers is really too broad and therefore exceeds the congressional intent underlying the Interstate Commerce Act.

The ICC traces its authority to exempt this class of transactions by regulations to 49 U.S.C. 10505. Under that statute, the Commission "shall exempt a person, class of persons, or transaction of service," when the Commission finds that the regulation is unnecessary to implement the transportation policy and the transaction or services are of limited scope, or will not result in abuse of market power.

The ICC has informed you, Mr. Chairman, in its letter of September 3, that the exemption was properly applied to Burlington Northern sale because there is "nothing in the Commission's rules to limit the use of the exemption to short line sales of the limited size or number of miles."

Yet the Commission should be guided by the statute instead of the Commission rules; 49 U.S.C. 10505 specifies that the Commission shall exempt a transaction which is "of limited scope."

I believe it stretches the imagination to characterize the sale of over 800 miles of railroad track as being of limited scope. This is not the typical noncontroversial transaction for which a class exemption was designed.

Far from being the sale of a short branch line, it is a sale of the major line railroad track to Montana, which will have a considerable effect on the State's transportation, employment, and economy.

The bill I have introduced, S. 1040, would require that the ICC review the sales of rail lines of 100 miles or more in the same manner the regular carrier to carrier sales are scrutinized.

Despite the ICC's characterization of these types of sales as noncontroversial, I believe that the potential for market abuse is very real. The Commission should be scrutinizing these sales to ensure that the public interest is being served.

The figure of 100 miles in my bill is an arbitrary figure, yet I believe in setting a floor. I do not know whether 100 miles is right or wrong, but I believe that some floor level should be set.

The bill does not impose any new standards for review which are above and beyond those that regular rail sales are currently given. It tells the ICC to use its authority and the intent of Congress in making a review of a sale that has some significant scope. This one does.

In the absence of review, the shippers have no assurance that the sale of the line will result in reliable service at reasonable rates.

The communities are entitled to know the effect of the size and have it scrutinized. And the workers, are anxious about their situation and what is going to happen to their jobs.

The railroad workers of the United States, getting ready to negotiate for their contracts next year across this country, have to be prepared to bargain on the significant points of what the carriers would like.

The workers involved in this transaction are to be the guinea pigs of finding out whether extending the runs, reducing the crews, is a successful venture.

Now, that may well be a successful thing to do, and it is certainly going to be a topic of bargaining for all the brotherhoods in this coming year.

Indeed, the testimony you probably heard at the meeting you held in Livingston, Mr. Chairman, was to the effect that they suggested this to the Burlington, that the crews extend their runs and they also suggested that there might be some modifications in size of crews.

Nothing was done about that, even though these recommendations were made or suggestions made to the Burlington well over a year ago, long before this sale was even contemplated or discussed.

As you are aware, I held two hearings in Montana—one in Missoula in May and one in Livingston on August 20. We have turned the transcripts of those hearings over to this committee for their examinations.

There has been an agreement reached by the Brotherhood of Locomotive Engineers which would reduce the workforce down to 750 employees from the current level of 1,000, meaning there would be longer runs and smaller crews.

But that is between labor and the carrier, whoever it is, whether it is the Burlington or this new company. All we want to be sure is that it works, and there is a proper level of safety involved.

But everybody is entitled to know just what is going on. One becomes pretty uncomfortable, if you try to look at what is known about all this since there has not been any ICC review.

Well, I do not like it. Associated Press quoted Darius Gaskins, the President of the Burlington Northern, that the sale might not go through if the ICC should require public disclosure of the terms of the sale.

I do not care much whether they are selling it for \$110 or \$160 million, or whether the report at \$140 million is about correct.

I do not care so much about that. But I care about an attitude that says they cannot reveal the terms of the sale because there might not be any sale if they did that.

What is there to hide about all of this? It has to come out in their financial report at the end of their fiscal year. They are going to have to say what they intend to get from this sale, if it is consummated, as it looks like it is slated to be consummated.

But I think it ought to be reviewed and the public ought to know something about it. That is just part of what we have found to be good business practice.

The ICC says that the remedy to a problem of market abuse lies in the right to lodge a petition with the ICC requesting revocation. If there is a finding of market abuse, even after the sale has been consummated, then the ICC reserves the right to undo the transaction.

I think that is unsatisfactory. They ought to have this review ahead of the sale being finalized, and they ought to have it promptly so that we know what is going on. Requiring divestiture of properties that have already been transferred is more disruptive of the business operation than it would be to have the review before the sale is finally consummated.

The class exemption under Ex Parte 392 refers back to the goals of our transportation policy. A major objective of that policy, is to promote competition among railroads.

And it is hard to imagine how the new operator will be a competitor to Burlington Northern, when on either end and a gateway in between it is well protected. On either end it is projected by Burlington, and the gateway in between to the Union Pacific is protected by the Northern Pacific. There is no chance of competition between the Burlington Northern and this new line. I believe such a sale as this should be examined by the ICC.

It is not too much to ask to have ICC review of a sale of such great magnitude. That is exactly what we need in this case. The ICC should apply the same rules as it would to another sale, as if it were to another carrier.

Mr. Chairman, I ask unanimous consent that a letter from the National Farmers Union be made a part of the record.

[The statement follows:]

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

I am pleased to have the opportunity to testify before this subcommittee and I thank the Chairman for scheduling hearings on my bill, S. 1040, and other bills that relate to the Interstate Commerce Commission's jurisdiction over the sale of railroad lines.

Of immediate concern is the sale and lease by the Burlington Northern Railroad Company of approximately 800 miles of BN's line running through Montana and Idaho to a new company, Montana Rail Link. This is the line that runs between Huntley, Montana, and Sand Point, Idaho and which constitutes a major portion of the southern line through Montana. The ICC exemption of the sale from review was effective as of July 31, 1987, and the actual sale is expected to occur around October 26, although there are currently six petitions pending before the ICC which request that the exemption granted to the sale of the line to Montana Rail Link be revoked so that the ICC can proceed to conduct an investigation of the sale.

This is not a small sale. It has been stated that the price is about \$140 million. Over 800 miles of main line track are involved. It is in excellent condition, has a high level of business, and is a profitable operation. Burlington Northern is not considering abandonment of this portion of their line, but is selling it for purposes of raising cash and to demonstrate that smaller crews and longer runs to be instituted by the new owners can operate successfully. Since freight going on or off of the 800-plus miles of the main line sold to Montana Rail Link will be back on Burlington Northern, there is little or no competition between them.

The ICC has made it clear that it supports this trend by doing everything it can to expedite these transactions administratively under Ex Parte No. 392 which exempts a whole class of such transactions—where the acquisition of the line is by a noncarrier operator—from ICC review.

If they continue to permit railroad sales of this nature, it will have a significant impact on national transportation policy. Whether or not the short line phenomenon should be encouraged is a policy decision which should be determined by Congress, by the elected representatives, and not by an agency which is not directly accountable to the people. I believe that the blanket exemption which the ICC has granted to sales of railroads to noncarriers is overly broad and therefore exceeds the congressional intent underlying the Interstate Commerce Act.

The ICC traces its authority to exempt this class of transactions-by-regulation to 49 U.S.C. 10505. Under that statute the Commission "shall exempt a person, class of persons, or a transaction or service" when the Commission finds that regulation is unnecessary to implement the transportation policy, and the transaction or service is of limited scope or will not result in an abuse of market power.

Ex Parte No. 392 was premised on the fact that virtually all of the requests for exemption from review had been granted in a review of 100 separate petitions for individual exemptions. The ICC concluded that a case-by-case review was costly and unnecessary.

The ICC has informed the Chairman of this subcommittee in its letter of September 3 that the exemption was properly applied to the Burlington Northern sale because there is "nothing in the Commission's rules (to limit) the use of the exemption to shortline sales of a limited size or number of miles."

Yet the Commission should be guided by the statute instead of Commission rules. 49 U.S.C. 10505 specifies that the Commission shall exempt a transaction which is "of limited scope." I believe it stretches the imagination to characterize a sale of over 800 miles of railroad track as being of limited scope. This is not the typical noncontroversial transaction for which the class exemption was designed. Far from being the sale of a short branch line, it is a sale of a major main line railroad track through Montana which will have a considerable effect on the state's transportation, employment, and economy.

The bill I have introduced, S. 1040, would require that the ICC review the sales of rail lines of 100 miles or more in the same manner that regular carrier to carrier sales are scrutinized. Despite the ICC's characterization of these types of sales as noncontroversial, I believe that the potential for market abuse is very real. The Commission should be scrutinizing these sales to ensure that the public interest is being served.

The figure of 100 miles is an arbitrary figure, yet I believe that setting the "floor" for review at that level will enable the ICC to exempt from review shortline sales which are truly minor and noncontroversial.

S. 1040 does not impose any new standards for review which are above and beyond those that regular railroad sales are currently given. The level of review is not so rigorous that it would halt a sale which is in the public good. But it would

curb any potential for market abuse and allow us to safeguard the interests of workers, shippers and communities which are served by lines being sold to noncarriers. In the absence of review, the shippers have no assurance that the sale of a line will result in reliable service at reasonable rates. The workers are understandably anxious to retain their jobs with the new rail company, yet they have no guarantee of job protection. And the communities that are adjacent to the line find it in their interest to ensure that the transfer of the line to the new owner takes place with the minimum of disruption of service. All of these competing interests must be balanced.

As the Chairman is aware, I conducted a hearing in Missoula, Montana, last May when the Burlington Northern sale was under discussion but not yet final to try to gauge the potential effect of the sale on communities, workers and shippers throughout the state. The subcommittee has received a transcript of the May 26th hearing I held in Missoula as well as one of a hearing that I held in Livingston on August 20.

The opinions regarding the effect that the sale of the line will have on continued rail service are mixed. Workers are apprehensive that the sale will result in dislocation, reduced employment, lower wages and loss of some benefits. Although additional information has been made available to the employees since my hearing in August, much of that information has done nothing to alleviate their initial concerns. The agreement that one union—the Brotherhood of Locomotive Engineers—has reached with the buyer prescribes significant reductions in rates of compensation and in the work force—down to 750 employees from the current level of 1,000.

If there is a consensus that emerged from the hearings, it would be the widespread concern over the paucity of information that was released by the seller and the buyer regarding the terms of the sale. No one could expect the parties to release proprietary information of a confidential nature, but without having access to the kind of financial and operating information that is normally furnished to the ICC it is difficult if not impossible to assess the impact of the sale and determine whether there is abuse of market power. One becomes even more uncomfortable when reading the statement made last week to the Associated Press by Darius Gaskins, President of Burlington Northern, that the sale might not go through if the ICC requires public disclosure of the terms of the sale. The natural reaction to such a statement is to believe that BN has something to hide.

The ICC says that the remedy to a problem of market abuse lies in the right to lodge a petition with the ICC requesting revocation. If there is a finding of such abuse after the sale has been consummated, the ICC reserves the right to undo the transaction. I believe that this solution is most unsatisfactory. Requiring divestiture of properties that have already been transferred is more disruptive of business operations before the sale goes into effect when there is still time to modify the terms of the sale or terminate negotiations.

The class exemption under Ex Parte No. 392 refers back to the goals of our transportation policy. A major objective is to promote competition among railroads. It is hard to imagine how the new operator will be a competitor to Burlington Northern. BN remains the connecting carrier at both ends of the new operation, and also retains ownership of track which leads to competing gateways.

I believe such a sale as this should be examined by the ICC. My concern is that a sale of this magnitude—almost 900 miles of trackage spanning the entire state, affecting some 1,000 employees and their families, and involving five principal communities—was consummated without any scrutiny. I respectfully request that the subcommittee act on legislation to remedy this loophole in the law.

Senator EXON. Without objection, so ordered. I thank you very much, Senator Melcher.

We will have some questions in just a few moments, if you can possibly squeeze it into your schedule to stay. I am very pleased now to recognize Senator Baucus from Montana. Senator?

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you very much, Mr. Chairman. I first want to take this opportunity to thank you for calling this hearing, and also for coming to Montana just last weekend.

You made a tremendous effort to learn about this problem in our State, and I am happy to tell you that you also made a tremendous impression upon those people in our State, and we are all very thankful for your efforts and are proud of you.

On behalf of all Montanans concerned about the sale of Burlington Northern's southern line, I have these statements and these points which I think we all should consider.

Let me remind everyone about what is going on here. In 1980, we passed the Staggers Act, which deregulated rail transportation. I voted against the Staggers Act. In retrospect, I think it was one of the best votes I ever cast.

As far as Montana is concerned, deregulation has been a bust. One reason has been the absence of tough enforcement. Simply put, the ICC has been asleep on the job. It has not done its job.

The subject of this morning's hearing is a perfect example. The Staggers Act provides, under section 10901, that a noncarrier may acquire a railroad only if the ICC finds that the sale promotes the public convenience and necessity.

Another provision, section 10505, permits the ICC to exempt transactions from review, if certain conditions are met. Taken together, these two provisions may establish a reasonable system of regulation.

But the ICC has transformed this system, I believe, into a regulatory joke. In early 1986, the ICC issued a rule exempting all non-carrier sales from review. All noncarrier sales from review.

Not just the sales of spurs. Not just the sales of short lines facing abandonment. Not just sales that are unopposed. But all sales.

The result can be seen in the case of BN's Southern Line. The Southern Line consists of 544 miles of main line, 286 miles of branch line. It serves 29 stations and over 49 shippers.

Last year it handled 54,000 cars. It employs over 1,200 employees. In short, it is the economic lifeline for an area that would stretch the distance from Omaha, NE all the way to Pittsburgh, PA.

Several months ago, the BN announced that it would sell the Southern Line to Montana Rail Link, a company established by Dennis Washington from Missoula, MT.

Let me make one thing clear. Denny Washington is one hell of a businessman. He has run a successful construction company. He has reopened the mines in Butte. He has made valuable contributions to the economy of our State.

Nevertheless, Montanans have many legitimate questions about this sale. They want to know whether MRL has the financial and managerial wherewithal to keep the line going. They want to know whether existing facilities will be maintained.

They want to know whether they will be able to keep their jobs. They want to know how the proposed sale affects shipping rates and service. They want to know if MRL has the opportunity to become a competitive carrier in its own right, or whether it will be a captive of the BN.

And they want to know what will happen if MRL does not succeed. As a result, the Southern Line sale has generated intense controversy and emotions that you can well imagine are at a fever pitch.

This is precisely the kind of situation in which the ICC could have performed an invaluable service. The ICC could have obtained the facts, listened to the arguments, and decided whether the sale promotes the public convenience and necessity.

But the ICC refused. In a cursory opinion, it held that the Southern Line sale was "the type of transaction appropriate for treatment under its blanket exemption policy."

As a result, we in Montana face a terrible dilemma. Exemption has gone into effect. MRL, responding to the ICC decision, has spent large amounts of time and sums of money recruiting its executives, setting up administrative offices, and arranging its financing.

I cannot fault them for moving forward. If the exemption is revoked, MRL's good faith investment will be jeopardized. But if the Commission does not revoke the exemption, it will have broken faith with the many workers, shippers, and communities who expect reasonable regulation.

Mr. Chairman, I think we all know how this case should be resolved. Better late than never. In the name of good public policy, the ICC should revoke the exemption, review the Southern Line sale thoroughly, and decide whether it promotes the public convenience and necessity.

In addition, we must overhaul the system for reviewing noncarrier sales. Let me make two very short and very specific points here.

First, a retroactive system does not make any sense. The ICC has emphasized that exemptions can always be revoked if things do not work out. But the sale of a railroad involves more than the transfer of property rights. It involves real people.

If you decide to sell your home, take your kids out of school, and move to Arizona rather than accepting longer hours and lower pay, revocation of exemption does not help you.

It is too late. You are long gone. You have made plans. We need a system that reviews these sales before people have to make these kinds of decisions.

Second, we need to separate simple sales from complex and controversial ones like Montana's Southern Line sale. Sure, we could have a streamlined regulatory process for sales of spurs and genuine short lines threatened with abandonment.

But we need to distinguish those sales from ones like this, which may have a profound economic impact, and have generated intense controversy. One solution is the bill I introduced earlier this year, S. 816.

This legislation provides that when a State objects to a non-carrier acquisition, the Commission must conduct a specific review of the sale to determine whether it is appropriate for the exemption. The blanket exemption would not apply.

Let me close with one final point. With this case, the ICC will leave a legacy in Montana that none of us is proud of. It is a legacy of arrogance and of indifference. It is a legacy of bitter public resentment of an agency that refuses to do its job. And all of it was so unnecessary.

If the Commission had simply carried out its statutory obligations, most of these problems could have been avoided. This is no

way to run a railroad. The system for reviewing these sales has to be overhauled. We have got to put some backbone back in the ICC.

Thank you again, Mr. Chairman, for your efforts. I look forward to continuing to work with you as we resolve it. Thank you.

Senator EXON. Senator Baucus, thank you very much. I am going to hold my questioning and yield now to my colleague from West Virginia.

Senator Rockefeller has a very important meeting that he has to attend this morning to give a major speech. It is to the stock exchange. I do not know why he picked this particular morning to give that talk.

But in all seriousness, I know it is an important speech that my colleague will be giving, and I yield to him now for any questions or comments that he has of these witnesses.

Senator ROCKEFELLER. Mr. Chairman, I am grateful to you, but in view of my upcoming agony, I will defer to the chairman.

Senator EXON. Thank you very much. I will recognize Senator Danforth now for any opening comments or questions he has for this panel.

Senator DANFORTH. I have no comments or questions at this point, Mr. Chairman.

Senator EXON. Senator Kasten, we welcome you. Do you have any comments, opening statements, or questions of Senator Baucus or Senator Melcher?

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you. I am pleased that this committee is considering one of the most encouraging trends in the transportation industry, the spectacular growth of the regional and short line railroads.

In the past when traffic declined on one of a large railroad's lines, its only option was to abandon the line. A number of forces have come together to make the sale of marginal lines an alternative to abandonment. These forces include the competitive freedoms of the Staggers Act, the decisions of ICC, and Federal planning and financial support.

The main focus of today's hearing is the ICC's line sale review process. I gained experience with that process during the ICC's review of the Soo Line's Sale of its Lakes States Division. The Lakes States sale was strongly supported by shippers, State and local governments and civic associations. I am happy that the Commission lifted its stay of this sale so that the new railroad, the Wisconsin Central Limited, could commence operations. I hope that we can use the Lake States sale to learn about the best procedures for reviewing large line sales.

Mr. Chairman, I look forward to the subcommittee's consideration of whether the ICC's procedures are encouraging small railroad growth in a way which preserves service and jobs.

I look forward to working with you in this hearing.

Senator EXON. Senator Melcher, the legislation that you have introduced would require the ICC to review sales of noncarriers in the same manner as the traditional sales from one road to another.

As I understand your legislation, that would be mandated by the law that you have written for roads over 100 miles, that is the break point. Is that not correct?

Senator MELCHER. That is correct. That is just a floor.

Senator EXON. Do you wish to comment on the Montana Rail Link proposal in this context? And let me clarify my question in this manner.

If this road that is being sold or attempted to be sold by Burlington Northern were 99 miles or less, does that mean that your law would not apply and the ICC would be in a position to grant the almost automatic waivers that they seem to be granting in some of these regional roads?

I take it that among other things you are trying to define a short line as something less than 100 miles. Is that an accurate interpretation of your legislation?

Senator MELCHER. Well, it is, and I do not know what the figure should be, whether it should be 100 miles or 200 miles or whatever.

But I believe there should be a floor. The ICC has been sitting there, while a lot of short lines, truly short line sales have been made.

And after reviewing a lot of them, they adopted these regulations which apply when they are sold to a noncarrier.

I can respect that. That may be very practical, but not when you stretch it to take in 800 or 900 miles of track, including 600 miles of main line track. A sale of that magnitude I think should be reviewed.

While I have no particular position on whether it should be 100 miles or 150 or 200 or whatever, I think there should be a floor for an exemption.

Senator EXON. But if I understand you correctly, your legislation is aimed at setting some limit on what would otherwise automatically be considered by the ICC, and tries to delineate the difference between a short line and a regional railroad. Is that accurate?

Senator MELCHER. Yes. That is accurate.

Senator EXON. At some figure?

Senator MELCHER. At some figure.

Senator EXON. It seems, at least there is a view, Senator, that with the imposition of 100 miles or some other figure, as you have said that you are not sure what it should be, that you would be suggesting in this legislation that there would be labor protection as an integral part of anything other than whatever is defined as a short line.

Is that an accurate interpretation of your intent in this legislation or not?

Senator MELCHER. Yes, it is. It is my intent that the same thing would apply to sales of this type as would apply if it were a sale to a carrier, and subject to review.

Senator EXON. Senator Baucus, the legislation that you have introduced also has some very interesting parts in it.

I take it from reviewing that legislation that what you are essentially saying is that the States have a role to play in this whole difficult matter of railroads, where we are going with them and how the sales are being made.

You want States input on this. As an old States-righter myself, I am more or less attracted to that. What do you think the timeframe should be?

We all have to recognize that the sale of railroads from one party to another, regardless of their length, does have some viability in time. I happen to feel that the timeframe that the ICC is allowing in some of these cases may put them on too much of a fast track, as I indicated earlier.

But how do you answer the criticism that if you have the States involved intimately in this process, that you would very likely cause some untimely delays that might make it infeasible to ever complete a sale in a timely fashion?

Senator BAUCUS. The bill I introduced, Mr. Chairman, has very tight limits.

It provides that once a carrier decides that it wishes to sell, in this case, to a noncarrier, that the State has 30 days within which to protest that sale to the ICC. The ICC then under my bill has 60 days within which to decide whether or not to grant the exemption.

I think that bill has some attractive features, and I think it perhaps has some features that are not particularly attractive in retrospect.

The attractive features are that it does involve the State, but in a way which is not to preclude the final determination by the ICC. I think some kind of State involvement is helpful here.

On the other hand, I tend to think that my bill does not go far enough, because it only provides that the ICC must determine whether or not to grant an exemption. That is, my bill in no way sets criteria under which the ICC should or should not grant that exemption.

The attractive feature of Senator Melcher's bill is that it tends to move in the direction of establishing separate criteria, under which the ICC should and should not grant an exemption.

It is my belief that the exemption provided for now by the ICC is way too broad. The ICC has made no differentiation among different kinds of sales. And in this case, this Southern sale in Montana, we have a perfect example of the kind of sale where the ICC should not be so cavalier and blase in granting its broad exemptive power.

I think we the Congress have to provide more criteria, more specific standards, to the ICC that differentiate between the kinds of sales that should be exempt, and the kinds that should not be.

Senator EXON. Well, just clarify for me, and for the record, your proposal would be that the States would have at least a reasonable time—

Senator BAUCUS. Thirty days.

Senator EXON. Thirty days, to put together what they think of the proposed sale, whatever it is, and that they then would make the information available to the ICC, and the ICC would still maintain final authority.

The States would have no veto power, it would just provide for input from the States in the decisionmaking process. Is that right?

Senator BAUCUS. That is correct.

Senator EXON. One last question for each of you.

As I understand it, both the Federal Railroad Administrator John Riley and Chairman Gradison will testify this morning that

sales of short line and regional roads often serve as alternatives to abandonment.

Now, I think you have both made the case pretty well here this morning that the Burlington Northern has not indicated that they are abandoning this road, or that they are about to, but that seems to be kind of the big club that is being held over moving ahead in a rather rapid fashion on this.

I take it that you both would not agree with the upcoming testimony of Administrator Riley and Chairman Gradison on the fact that while it might be true that certain sales of short line or regional railroads might provide a beneficial effect to shippers and to railroad workers, that does not apply in this instance in your opinion.

Senator MELCHER. Well, it certainly does not apply, Mr. Chairman. I have asked the Burlington, and anybody they wanted to send to my office or send to the hearings I held in Montana, where this talk about abandonment originated. I saw an editorial in one of the leading newspapers saying that a sale is better than an abandonment. And the Missoula Chamber of Commerce testified that a sale to somebody is better than abandonment.

There never was any thought of abandonment. You are not going to abandon a line that is making a ton of money, and I mean exactly that.

Now, Darius Gaskins, the president of Burlington Northern Railroad, is quoted as saying they only got a 6-percent return on this chunk of line, and who wants to have their money out for 6-percent.

I remember just a few years ago—maybe 10 or 12—when if you could get a 6-percent return on investment on a railroad line, it was an outstanding line. I do not know what their return on this chunk is. They have a figure, I am sure, in their bookkeeping mechanism. This is a very profitable chunk of line, and there has never been any consideration by Burlington on abandonment. You just do not do that when you are making a lot of money, and it is a long haul freight chunk of line. And again, as Senator Baucus said, it is like going from Omaha to Pittsburgh.

When you go from Huntley, MT to Sand Point, Idaho, that is a long chunk of line, and it is first class railroad, almost all of it is welded rail. It is all in great shape. And of course, it would never be abandoned.

Senator EXON. Senator Baucus?

Senator BAUCUS. Mr. Chairman, your question precisely demonstrates why the ICC was derelict in its duty here. There should be a hearing here to determine in part the answer to that question. We do not know for sure the intention of the BN, whether or not they would abandon the railroad. There are people who have different views on that.

But the ICC could better determine the answer to that question as well as the answers to many other questions if it were not to grant the exemption and have a hearing. And that is precisely the point I am making. The ICC should have a hearing.

Senator EXON. Gentlemen, before you leave, just one last question to try and—we are going to have an awful lot of testimony

today, and I guess what is going through the chairman's mind is well, where are we going and what are we going to do?

I started out by saying that I did not have enough information to know whether this sale was good or bad, in the long term interest of Montana and the workers and the investors in the railroads. There is going to be conflicting testimony on that today, I am sure.

Obviously we know that regardless of the merits of the three bills that are being considered, there is no way that they are going to pass in time to solve the particular problem that faces us if the present plan allows consummation of this sale by, I believe the date is October 26.

Now, given that as a set of circumstances, what are you two Senators from Montana recommending be done. I suspect that what you would like to see is a minimum of the ICC changing their intended and voted upon, up until now procedure on a three to two vote, to go ahead with the sale.

If we could get agreement from the ICC by the changing of at least one vote, what is a reasonable time frame to be as fair as possible to Burlington Northern, to Mr. Washington and to the people of Montana and to the people who work for this railroad and may work or may not work for the new railroad? What time frame are you thinking of? A week's extension, a month's extension, 6 months' extension?

What do you think we could reasonably do as of now, and what are your recommendations if you had the authority to say today how this matter should be resolved other than the sale of the railroad on October 26?

Senator MELCHER. Well, Mr. Chairman, I know the legislative process, and we are not going to pass any bill before October 26, and we might not pass any bill before November 26. But your question is very pertinent because I would like to see this subcommittee recommending to the full committee that it request that the ICC hold up on the final consummation of this sale at least 90 days. The committee staff and members of this committee have a better idea than I do of what the ICC and what the committee can work out in a time frame of 90 days. But I believe something could be done in that length of time, and I believe the policy we have now of no review is absolutely detrimental to the public interest.

Senator EXON. Senator Baucus?

Senator BAUCUS. Mr. Chairman, I think that is the kind of question we can get a better answer to once we ask that question of various other parties here, not only the ICC, of course, but shippers and the MRL representative here.

My guess would be that something in the nature of 30, 60, maybe as many as 90 days is reasonable. We have competing interests here, obviously. One is the interests of the employees and the shippers and the communities. They want to know what the terms of this sale are and the answers to the other questions that we have all raised.

On the other hand, MRL has made a certain investment here, and if it is the wisdom of the ICC and the collective judgment of the people of the State of Montana and elsewhere that maybe after all the sale is okay, then we would not want to jeopardize that sale by waiting too long.

So that is a tough question to answer. My guess is——

Senator EXON. Well, but that is the key question, is it not?

Senator BAUCUS. It is a key question, and I am suggesting that it is a key question we should probe and inquire of the witnesses here, and the top of my head judgment is somewhere between say 30 and 90 days seems to make sense.

Senator EXON. Thank you.

That question was intended to be asked of all the witnesses of the panel when we conclude this morning because I believe that, all the rhetoric aside, all the pluses and minuses, in our effort to try to be fair to all parties involved, the key question is if not October 26, when? And we will ask for the input of the others.

Senator Melcher and Senator Baucus, I want to thank you very much for excellent testimony.

Senator BAUCUS. Thank you, Mr. Chairman. It may well be that yesterday's events of Wall Street and today may have some bearing in the answer to that question, too. I suggest you ask that of the witnesses.

Mr. Chairman, if I might, I have a statement of Mr. Joe Brand from Deer Lodge, MT who is the legislative director of the United Transportation Union. He has also served in the State legislature for 10 years. He would like to have his statement included in the record.

Senator EXON. Without objection, Mr. Brand's statement as submitted by Senator Baucus will be accepted in the record.

Thank you for coming in.

You are excused.

Senator MELCHER. Thank you.

Senator BAUCUS. Thank you.

Senator EXON. I will call on now the Honorable John Riley, Administrator of the Federal Railroad Administration.

Mr. Riley, welcome again before the committee. We are very pleased that you agreed to come over this morning. You are certainly a key player in all of these matters regarding the very important railroad industry of America.

Would you please summarize your testimony?

If you could summarize and submit your statement for the record, Mr. Riley, we would appreciate it very much.

STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ACCOMPANIED BY SUSAN COUGHLIN, DEPUTY ADMINISTRATOR; WILLIAM LOFTUS; AND MARK YACHMETZ

Mr. RILEY. I will do it.

Before I begin, I want to make a couple of preliminary introductions.

On my right is Susan Coughlin, the new Deputy Administrator of the Federal Railroad Administration, whom I would like to introduce.

Senator EXON. Welcome, Susan.

Mr. RILEY. And on my left is someone of long tenure, Bill Loftus, who is the longest tenured employee in the Federal Railroad Administration, and has worked on these issues for many years.

And the guy who drew the short straw this morning is Mark Yachmetz, who is going to assist us with the charts.

I just want to say, I know from the work we have done together how committed the chairman of this committee is to a fair process that honors the seemingly conflicting goals that we have heard talked about this morning.

In the interests of time, let me get right to the matter at hand. This is my 26th appearance before a congressional committee this year, and it is a good one for me, though, because I feel strongly about this issue. I started out in this business trying to preserve service on light density agricultural branch lines in southern Minnesota, and it is my view that with the possible exception of the Staggers Act, there is not an issue in this decade that has brought more benefit to shippers and consumers than the movement toward small, independent carriers.

Now, we have learned in the 1980's that the small, independent carrier can operate profitably on lines that cannot be self-sustaining under the very different economics of a class I railroad, track-age that would literally have been torn out of the ground a couple of decades ago. There are several reasons for that.

First is that the short lines have a more flexible cost structure than the larger carriers. Now, I do not think that any of us need a Ph.D. in transportation economics to understand that the fundamental economics of those light density agricultural branch lines and the fundamental economics of the heavy density main lines are not the same. And the marginal branch line simply cannot operate under the same cost structure as the main line if it is going to stay in business.

Now, unfortunately, it is very difficult for a class I railroad to set up varying cost structures on different parts of its system. Labor and management have never been very comfortable with agreements that have employees working on adjacent lines under different wages, work rules and conditions. And the carriers have little latitude to alter the fixed costs in different segments of their system.

But fortunately, the smaller, independent railroad does not suffer these diseconomies of scale. On the fixed cost side, the small railroad can maintain a less costly equipment inventory by keeping power and rolling stock tailored to the needs of particular shippers, and it can normally maintain its track to a different standard.

On the variable cost side, the short line, whether it is union or nonunion, is generally free of the rigid craft lines and anachronistic work rules that typify major carrier labor agreements. That enables the short line carrier to use the talents of a single employee on a multitude of tasks rather than having to hire three or four people full time when their services are needed only part of the time.

It is not a wage issue. It is a size of force issue. And the short line or small regional is simply better able to adapt the size of its force to its real shipping needs.

I want to emphasize, though, that cost arguments are not the only reason the short lines work, because we have learned that they can compete on service in areas where a class I railroad can rarely be equally effective.

The attention of the class I's is focused on the things they do best, which is generally long haul, heavy density carriage. And unfortunately, a light density line lives or dies on its ability to serve the particular needs of a limited number of small shippers. The short line railroads have demonstrated their ability to focus their management philosophy on that issue and to provide marketing and service competition in areas where the larger carriers really have not been effective in doing it.

Now, there are tangible examples of this going on all over the United States, and we have literally had an explosion in the creation of independent railroads in this decade: 12 large regionals and about 145 small short lines. The chart on my right illustrates the context: In the 1930's we had a dozen short line railroads created, in the 1940's, nine; in the 1950's, 15; in the 1960's, 13. In the 1970's, even with the regional rail collapse in the midwest and the east, we had 44. But in the first 7 years of this decade, 157 short line and small regional carriers have been founded.

Now, obviously, Mr. Chairman, these numbers reflect more active effort by the major carriers to rationalize their systems, and they had to do that. But the real message here is the increased success that we have had in maintaining service over lines that 10 years ago would have been abandoned, pulled from the ground and sold for salvage.

The key point to bear in mind is that as we end the year 1987, we find that more than 80 percent of the independent carriers formed in this decade are still operating successfully, 86 percent, to be exact. That is a success rate that far exceeds the average for start-up businesses. And you know, it is really remarkable when you consider that the lines being sold are invariably the least successful, most poorly maintained, lowest density lines in the system.

It is no coincidence, Mr. Chairman, as the next chart illustrates, that as the number of successful short line transfers has increased year to year in this decade, abandonment petitions have fallen dramatically, from 4,800 miles a year in 1980 down to 1,900 miles a year in 1986.

And there is a direct tradeoff. If you look at the lines involved, they are invariably the same lines.

Now, two policy initiatives at the Federal level have driven the growth of short line railroads, one legislative, one administrative. The first, of course, was adoption of the Staggers Rail Act. The Staggers Act gave the short lines many things. It gave them the ability to enter into contracts that would bind their shipping volume, lock it in place, which is essential to gaining the financing necessary to buy and rehabilitate these lines. It freed them from the threat of the automatic rate protest, which was something they could ill-afford, but a commonality in the pre-Staggers era. But most important, it gave them the service and pricing flexibility they need to compete with their real competitor, the deregulated short haul trucker.

Equal in significance was the policy position taken by the ICC on labor protection in the *Gulf & Mississippi* decision. In that case, the Commission made it plain that it would not impose major carrier labor protection in line transfers to newly formed, independent

carriers. In my judgment, that was a victory for jobs, it was a victory for service, and a victory for common sense.

I would like to explain why: The imposition of mandatory labor protection materially alters the economics of light density lines. It adds to the purchase cost without producing any countervailing revenue, increasing the need to borrow, and weakening the carrier's cash flow. It also injects delay and uncertainty into the transaction, discourages potential financiers. The more marginal the line, the greater the impact of these negatives.

Unfortunately, that impact does not end with the transfer of title to a light density line. Labor protection reduces the cash and borrowing capacity available to the new carrier for track rehabilitation, and burdens the already marginal short line with a cost of operation that its trucking competitors do not have.

Now, the *Gulf & Mississippi* decision spurred short line development and preserved service on countless branch lines, because for the first time—and this is the essence of the issue—for the first time it made preservation and sale of a line more attractive to the major carrier than the traditional remedy, abandonment. For decades, carriers preferred abandonment because it was simply the cheaper option. If they sold the line, the carrier had to pay labor protection obligations for the whole work force, but if it abandoned the same line, it could easily evade those obligations.

Here is how it was done. They would simply stop investing in the line. And, when the carrier stopped investing in the line, service levels deteriorated and the volume fell with it. As the volume fell, the carrier could lay off the employees under the decline in business clause in the contract without paying any protection at all. It is a myth to argue that employees were protected prior to *Gulf & Mississippi*. What actually happened was that the railroads would allow the condition of the line to run down to the point where there were a half a dozen employees left, and then abandon the line. They would be protected. But the scores of employees laid off because of the decline in business had no protection, and the jobs and service were lost forever.

Ironically, the one thing that labor protection never did very well was protect labor. It was a cycle of deterioration that we saw in rural America. Indeed, we saw it all over this country.

In reversing that cycle, *Gulf & Mississippi* did a lot more than protect short lines. *Gulf & Mississippi* protected jobs, and it protected service. It is no accident that about 80 new short lines have been created since *Gulf & Mississippi*, and abandonment filings have been cut in half.

The last point I would like to make, Mr. Chairman, is, as the final chart illustrates, the regional railroad phenomenon is the closest thing to a win-win situation that you are going to see in the railroad environment. Short lines have benefited because shippers and communities are able to preserve lines that otherwise would have been abandoned. The major carriers win because by preserving these branch lines rather than abandoning them, they continue to get much of the traffic which creates jobs on the main line as well as the short line.

But the key issue is employment, and employees have gained in two respects. The very concept of a spinoff railroad emphasizes job

preservation rather than elimination of jobs in return for protection to a few employees. And by preserving these lines as feeder lines and enhancing volume on the main lines, you increase the job prospects for employees on the main lines.

Now, obviously there is a decline in employment when these lines are initially created. But as the chart on my right shows, every single one of the large regional railroads that have been founded in this decade has increased employment since the date on which it was founded.

Now, there are three others that do not show on the chart because they were formed this year. We have no comparison for them. And that is a key point. These are lines on which employment had been dropping on an annual basis for two decades. Since their reformation as regional railroads, employment has increased on every single one.

Now, there is a final point. Safety and efficiency win in these transfers because the new owners make investments in these lines that the class I railroads which did not want to operate the lines were rarely willing to make. Whether it is as rudimentary as a tie program or as important as rail replacement, the investments made by the short line and regional entrepreneurs are invariably the first investments made in these lines in decades.

We find that they are invariably more safely run and better maintained than they were when the big carriers owned them.

The bottom line is a simple one, Mr. Chairman. It is my view—and this is not a comment on any specific transaction—that it is better as a general principle to put rail lines in the hands of men and women who want to run them than to leave them in the hands of carriers that have no interest whatsoever in their future.

There are no absolutes in this world, and all transactions are going to have to be judged on a case-by-case basis. But I really believe that independent ownership is preferable to its two alternatives, which are abandonment or continued ownership by large railroads with different priorities for the future.

I would ask that the rest of my statement be put in the record. It is my view that we ought to be pursuing policies that promote the success of independent railroads. I have outlined quite a few of them.

I will not go over them for reasons of time this morning, but I would be glad to comment on the exemption question which is covered in the testimony I have submitted.

Senator EXON. Mr. Riley, thank you very much. As usual, you are right to the point, and you have given good testimony.

I have some questions, but at this time I am pleased to yield to the ranking member of the subcommittee.

Senator KASTEN. Mr. Chairman, I have a couple of questions.

Is this a chart that you picked because these are particularly good examples, or is this a chart that represents what has taken place over the last couple of years?

Mr. RILEY. That is a completely inclusive chart.

There are two types of independent railroads.

Senator KASTEN. There are no small spinoffs that have occurred that are not covered here?

Mr. RILEY. These are the regional railroads, which are the large spinoffs. That seems to be the issue. There are 12 large regional rail spinoffs. Three of them were created in this year, so we have no comparative figures. Those are the other nine.

Now, I want to make a point that clearly there was some decrease in employment when they were initially established.

Senator KASTEN. I understand.

Mr. RILEY. As the craft lines were adjusted. But since they were established and thus able to price their services in an economically realistic way, employment has gone up because they have been better able to compete. And that is all-inclusive. That is all nine of the ones with which we have more than 1 year's experience.

Senator KASTEN. And in your current employment column, would you estimate that the wages of those current employees are roughly what they would be on the class I? Are they more, less? How do those wages compare with the wages that they would have had?

Mr. RILEY. Well, it varies from carrier to carrier. They are generally about 90 percent of the national scale, 85 to 90 percent. But they include bonuses which, if the railroad has a successful year, can bring them up so that the employees participate in the success of the railroad.

Now, nine of the 12 new regionals are unionized, at least to some extent, and of course, the national benefit packages are uniform. So they receive the same pension benefits and the same Railroad Unemployment Insurance as a national agreement person would.

Now, when you get down to the short lines, of course, that varies much more. But on the regionals, wages tend to be 85 to 90 percent of scale.

Senator KASTEN. With different kinds of incentives and bonuses.

Mr. RILEY. They vary from carrier to carrier. They generally have a bonus clause to try to make the employee a participant in the success of the railroad, which is the way it ought to be, in my opinion, but then, I am not running a railroad. But I think that the more people can participate in the success of any enterprise, the better their motivation is.

Senator KASTEN. But you are talking then about in certain cases doubling, or significantly increasing employment and seeing wages being maintained, and in some cases increased as a result of bonus situations.

Mr. RILEY. Well, you know, it is important to recognize that four of these regionals were formed from railroads that had gone out of existence. They were bankrupts that had essentially ceased operation. So we are really being pessimistic to ourselves to—

Senator KASTEN. So your employment at acquisition number should really be zero.

Mr. RILEY. The Class I employment should really be zero. We are counting the employment at the time that the new railroad started business. The Rock Island spinoffs and the New York, Susquehanna & Western lines had been in bankruptcy and were facing liquidation.

I just really believe that—I watched for many, many years, employment fall just about every year as volumes and service declined on these agricultural lines, and one of the reasons was it was very

hard to get any purchaser to come in if they had to pick up the labor protection. It was just an enormous, undefined cost. I really became convinced that labor protection, which at one time I thought was a very good idea, has cost so many jobs and has cost so much service.

The nice thing is to see that as the ICC has acted where it could act to create an exception, that it has meant increasing employment rather than decreasing. And nine of these railroads are already unionized, and they have only had about a year, 18 months to work. I believe they will all be unionized once the labor guys, who I respect very much for their organizational ability, have a chance to get out there and get going.

Senator KASTEN. Thank you.

Senator EXON. Senator, thank you very much.

Mr. RILEY. I want to emphasize that I am not commenting on Montana Rail Link or any specific proposal here. These are generic comments.

Senator EXON. Mr. Riley, we have worked together on many, many things, and I have always found you open minded on these things and willing to listen to some of the other concerns. I am impressed with your chart, and I think you know how this Senator has basically felt about short line and regional railroads; if there is abandonment, then there can be no question that the short line or regional railroads are a viable option, and the employment chart and the testimony that you have given us this morning demonstrate that, at least the way I look at it, beyond any reasonable doubt.

However, I am not yet convinced that the case that you have made for short line and regional railroads is necessarily the criteria that the ICC—and that is not a determination that you have to make—but we asked you to come over and testify this morning because you have an awful lot of experience in this area.

Let me ask you this question. Supposing that this 830 miles or whatever it is of track generally in the southern part of Montana that was formerly in Northern Pacific road, were not going to be abandoned by Burlington Northern. Would the same arguments that you have made generally this morning on the merits of short line and regional railroads apply?

Mr. RILEY. Well, in a slightly different way.

Now, this line, as I understand it, was not a line that was targeted for abandonment. This is a little different from a lot of the other cases we have dealt with. This was a case where the BN was running the line but a local entrepreneur owner from Montana approached BN with a proposal to purchase and operate the line. So it is a little bit different.

Some of the same situations apply. I want to emphasize one thing that I hope the committee will consider. If you are going to make a—we get trapped by the use of this phrase “short line.” If you are going to distinguish between lines, it really cannot be on length. The key issue is density because we are trying to save our light density lines. You can have a 700 mile light density line, you can have a 30 mile line with such heavy density that—well, the Harrisburg Line out in Pennsylvania, a shorter line, heavy density. So the distinction has got to be made on density.

As to this particular line, I think it illustrates a common problem that a lot of lines in our region of the country have.

This line I would not describe as a really, truly light density line. But if you look at the traffic that flows over it, the great majority of that traffic is overhead traffic. And if the BN wanted to move that line into a position where it could be abandoned, it would be a very simple proposition to do it.

They have an alternative line with their northern line. They could shift that overhead traffic from the southern to the northern line and leave this line entirely dependent upon its local traffic.

Do I see any indication that they intend to do that in the short run? Of course not.

But I simply want to make the point that the issues which are simple in the case of a line that is about to be abandoned get very complex when you move into a line that is not. But there are still benefits to—

Senator EXON. Which is the case before us.

Mr. RILEY. Which may be. I do not pretend to know all the details of it.

But let me also say there are significant benefits in local ownership. I would much rather be dealing with an owner who lives in the State of Minnesota where I live than to deal with the Burlington Northern, which is a Texas corporation, in my view, since they moved out of St. Paul. Moreover, I will say—and I do not know the economics of this line. I do not pretend to, but I will say that I understand Bill Brotsky is going to come in to run it. Bill and I go back a long way. Bill devoted about 3 years of his life to trying to save the Milwaukee Road's main line across the middle of Montana out to the west coast.

So what you have to balance are the fact that this is not a truly heavy density line, even though it is not a real light one; the fact is that there are mechanisms the railroad can use because they do have parallel northern and southern routes, they could shed one of those. Is there an advantage to local ownership? I believe there is always an advantage to local ownership if the economics are there. That is the issue.

Senator EXON. Well, if we go back then a little bit, Mr. Riley, to try and establish a case for the record, when Burlington Northern assumed a few years ago the so-called northern route, I believe that substantial assurances were given at that time that no, no, no, they were not going to abandon this; they felt it would be good business for Burlington Northern to have these two lines across Montana, and so intended to operate them.

Now, I recognize that people can change their minds and all of these kinds of considerations that always are a factor in these determinations, but I think that if you would study this particular line a little bit further, while I do not know nor am I an expert in any fashion with regard to the density of traffic, I have received an awful lot of assurances from an awful lot of people that indicate to me that this particular line never in recent memory has carried the volume of traffic that it is carrying right now. Indeed, they are having a great deal of difficulty in maintaining the crews to run the trains, even though many of the crews at the present time are being granted extended time; that in some cases there has been a

loaded train with a locomotive on it, required to just simply sit at a certain location because they cannot get the crews, they are too busy.

It would seem to me that, from what I know of this—and I stand to be corrected by later testimony here—that indeed this is a tremendously viable line from the standpoint of moving traffic, and it may not be the most lucrative profit-wise, I do not know about that, because one of the problems that you know we have is at what level do we accept the statements, facts and figures from the railroads with regard to their profits.

I sat as a Governor of Nebraska on the State Board of Equalization and listened to railroads, you know, for 8 straight years saying the sky is falling, and it never did.

So you know, I do not accept *carte blanche* what the railroads testify to from time to time.

Let me ask this question. I take it that you do not know much about the details, if anything, of the proposed sale.

Mr. RILEY. Well, let me say this. I know the tonnage figures on the line, but because they are sealed, I cannot say them in open hearing, but I would be glad to provide them to the chairman, which I can do, and they will tell some of the story.

As to the financial details of the sale, I do not pretend to know about them. We have not commented on its merits.

As to the comments about assurances, I do not know about that, but I would only say I am not sure that those types of assurances are very good collateral when you take them to the bank.

You made a couple of points, Senator, that I would like to comment on if I can, and I think it is helpful to the committee.

Obviously the arguments and factors that go in to considering a sale when the line is not a candidate for immediate abandonment are different. But that is not to say that divestiture only works when a line is close to death. There are some advantages to local ownership, and there are advantages to looking down the road.

Now, whether these factors apply here, I cannot tell you. But I think this all gets back to the exemption issue, and let me just state my view on the exemption issue, because that seems to be the main issue in discussion here this morning.

You know, I think on a general principles, the factors that led the ICC to adopt the exemption still apply today. You do not by definition have competitive issues in a case where a sale is going to a nonrail entity. Moreover, it ought to be our public policy to lower the entry barriers as much as we can as a mechanism to preserving service, and that is what the exemption does.

However, I do not think there is anything sacrosanct about the 7-day period, and I think that is something that ought to be reviewed from time to time. I am also not strongly opposed to having a differential review standard which would involve a lengthier review for heavier density lines. If that is done, however, it ought to be done not on length of line but on some density formula.

But I think the bottom line is that the issue here is really less time of review than it is information. If in fact the initial filing that goes before the ICC is not a cursory one but does contain some reasonable amount of information short of releasing trade secrets, it is then possible for States and other interested parties to review

and make a decision on whether to file. And I think you can solve much of the problem that is being referred to as a time problem by changing the quality of information that has to be revealed in the initial filing.

If you have the data, a 7-, 8, 10-day period is not unreasonable to make a decision on whether to file a protest or not. If you do not have the data, a longer period of time is probably necessarily while you try to figure it out.

And I would just urge the committee to consider those two as interrelated factors.

I think there is a difference between Senator Melcher's bill which includes labor protection and economic and service reregulation of short lines, which would essentially end the transfers, and what Senator Baucus is talking about and the bill which Senator Burdick has filed which seeks simply to elongate the period.

Having said that, I am generally not in favor of locking in stone through legislation the length of the review period because I think it is something that has to change over periods of time as these transactions change. But it ought to be reviewed, and I do not have any strong objection to going beyond 7 days as long as the time period is the shortest period consistent with the reasonable ability of States and others to comment. I think that is something that is going to have to be set by the Commission so it can be altered on an ongoing basis as the mix of these transactions does in fact change, because yesterday we had a classic illustration of why delay kills deals.

There are business deals all over this country, and perhaps some railroad deals, that went down the drain yesterday when an unanticipated change in the stock market undercut the underpinnings of the financial commitments. The more one delays, the more there is risk to consummation. So you balance all these things.

Those are my views on the exemption, and we will be filing with the ICC some comments. We frankly have not decided what time period we are going to suggest yet, I have to be honest with you, but we are going to urge the ICC to be flexible on it and to relate their comment period to reasonable differences in the transaction while keeping it as short as is reasonably possible.

Senator EXON. This may not be a totally fair question, but since I feel that you have a lot of expertise in this matter, with all of the difficulty and unanswered questions that we have with regard to this particular sale, do you think it is unreasonable for us to at least suggest to the ICC some reasonable period of delay until the final determination is made?

Mr. RILEY. Well, let me give you an honest——

Senator EXON. I am asking you to play ICC member for a moment. Please do.

Mr. RILEY. I understand. The key elements to your question are unanswered material questions, and whether there are or are not significant unanswered material questions is a function of what is in that record. Because I have not had the opportunity to review the record, I would be shooting from the hip if I said that.

I think the concern of the committee is certainly reasonable. The answer lies in the record itself, and I would give you an answer if I had had a chance to review the record. I have not.

Senator EXON. All right.

One last question. Assuming that this proposed sale takes place, and assuming that the new owners own no equipment except locomotives as separate and distinct from other rolling stock, in your opinion and experience, might that lack of rolling stock have a tendency to impair and not make such a railroad competitive in the future or not?

Mr. RILEY. Well, I will give you an honest answer. We have averaged about 66,000 surplus freight cars, per week in this country this year, and that is one of the things that came out of deregulation, better equipment utilization. I think if I were setting up an independent rail line, I would make as few equipment commitments as possible until I got my approval. Then I would shop for the very best price that I could get.

I think equipment is readily available today. I think a smart businessman would play off that slack market.

Senator EXON. So you do not believe that this railroad might become a semicaptive of Burlington Northern, for example, because Burlington Northern would be the ones that would be supplying their rolling stock at Burlington Northern's option.

Mr. RILEY. Well, I think there would be a parade to the door of this railroad by the Class I's around the country trying to sell or release equipment that they have essentially been stuck with.

If you take a ride along the Conrail main line, you will be amazed at the rolling stock that is sitting out in those yards, just sitting there. The Pittsburgh & Lake Erie was in China when I was over there, trying to divest some of their cars to the Chinese. That will give you an idea of what this market is like. Their fundamental decision will be whether to buy or lease.

Now, the thing to watch there is how could they become captive? They could become captive if there were a clause in the agreement that they had to acquire their equipment from the BN. That would make them captive. But absent that kind of a clause, it is a buyer's market for railroad equipment today.

Senator EXON. Thank you. That is helpful.

Senator Pressler.

Senator PRESSLER. I just have a statement for the record. I do not want to go ahead of Senator Kasten, but let me say that I look at these figures on employment with great interest, especially Dakota, Minnesota & Eastern. I have said it would be a tremendous mistake to wipe out this progress by indiscriminately applying labor protection requirements to these transactions.

Make no mistake about it, this type of action would put an end to regional and short line development in this country, and I think that the employees' best interests would lie in this direction.

Since the Conrail debate, it has been a great interest of mine, the regional and short line railroads. I know many of them are very fragile, but that has been the solution in our State. We have been able to move agricultural products and other products at a much better rate.

Now, while I do not support these types of sales as backdoor abandonments or as management tools for union busting, it would be a grave mistake to stifle legitimate rail development using these

types of arguments. I believe some type of legislation we are considering today would have exactly that effect.

While I remain open to addressing legitimate concerns of rail labor, the bulk of the legislation introduced in both houses thus far greatly exceeds that scope. I hope we do not undo one of the few positive results transportation deregulation has achieved in rural America. And let me say I voted against deregulation, but we are living with it, and I think this is one of the positive results.

So, Mr. Chairman, I would yield at this point.

Senator EXON. Thank you very much.

I am pleased to recognize the ranking member of the subcommittee for a short question.

Senator KASTEN. Mr. Chairman, thank you, and I just wanted you to comment, if you would, John, what would be the effect if in fact our committee or the Congress starts getting involved in establishing delays?

I mean, it seems to me that what you have on this chart and your testimony is probably one of the most exciting and encouraging trends that is happening in transportation. I echo the comments of Senator Pressler.

If we as a Congress get involved in starting to delay, to change, to alter, to put in different standards, are we at the same time in the process of starting to dampen, if you will, the positive trend here? Or do you think that we could get involved in one or two sales because of particular extenuating circumstances and not have a negative effect on this encouraging trend?

Mr. RILEY. Well, delays in regulatory proceedings obviously involve costs, and those costs are an entry barrier, and I think as a matter of general principle, that we ought to try to minimize the entry barriers into all transportation industries because minimal entry barriers promote retention of service where densities are light, and they promote competition where densities are strong.

So I think that delay for the sake of delay is almost inevitably counterproductive.

The difficult issue here on review times is what is reasonable, and that is not an easy issue to answer in the abstract. It really is not.

I guess I would come back—and I will be honest with you. We may file in the *Montana* case, and therefore I have gone out of my way not to give you a specific answer so as not to prejudice my filing. I really have to be honest about that.

But the point I want to make is the bellwether we ought to follow, whether it is the Commission deciding this in an administrative sense or Congress in a legislative sense, is to keep the review periods to the shortest level possible consistent with reasonable opportunities for public comment. That is what we really need to do.

I really do think yesterday was an excellent example of how unanticipated market changes can undo deals. Anyone who has bought a house understands the importance of timing in a closing. It is so much more complicated on a light density rail line.

The bigger issue is labor protection. Labor protection in these things is a lethal issue, I think. It really is. The bigger lines that can afford it tend to negotiate it. Five of these lines actually had

labor protection on them as part of the deal because labor peace is very important to sellers and buyers alike. But the line that gets killed with mandatory labor protection is the most marginal one, which is the one we have to work the hardest to save because all those costs are passed on to the buyer.

I think that is a much more important issue than the length of review time. But the length of review time becomes essential if we begin to delay for delay's sake.

Senator EXON. I have no further questions, just a statement for clarification of, I think, what is the position of most of the members of this subcommittee and the full committee of the Commerce Committee, and that is not whether we should be concerned primarily about involving ourselves in the determinations made by the ICC, but whether or not—and this is the key question—whether or not the ICC as presently constituted is carrying out the dictates and the wishes of the Congress when it passed the Staggers Act.

In some other areas, with particular regard to captive shippers, while there are pros and cons on the issue, it has been this Senator's view that the ICC has leaned over backwards in not interpreting some of the provisions in the Staggers Act that they are supposed to review as was envisioned at the time that the Staggers Act was passed by the Congress. So I do think we have a responsibility to make sure that the regulatory agencies are not shortcircuiting the intent of the Congress with regard to the Staggers Act, and that is what we intend to focus on.

Mr. RILEY. There are two things I have learned to appreciate a lot in the last year. The first was—and I thank God every day for this, that I was never appointed to the ICC. The second thing that I came to appreciate yesterday was the real value of the conflict of interest laws that prevent me from buying stock.

But these are very complicated issues, they really are, and if there is nothing else I have been able to convey this morning, I hope that I have been able to convey that on the sheer numbers economics side, these line spinoffs are basically good things because it is always better to have a line in the hand of someone who wants it than someone who does not want it, because if they cannot sell it this way, they will be looking for some other way to get rid of it, and it may not be as good.

On the other hand, the issue of what is proper review comes down to what is reasonable. And that is tough. That is a case-by-case judgment, very, very difficult. But that is why I prefer to see the ICC have the ability to review its rules and alter review periods from time to time as the nature of the transactions change rather than setting any time period, whether it is short or long, in legislation.

Thank you.

Senator EXON. Thank you, Mr. Riley.

All I can say is thank you for coming here, and it is also refreshing to know at least there was one American that did not lose any money yesterday.

You are excused. Thank you very much.

[The statement follows:]

STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATOR, FRA

Mr. Chairman, the transportation industry is an industry of special interests, and much of our legislative debate reflects that fact. The different modes jockey for a greater share of an essentially stable pie; labor and management fight to apportion the share each mode is able to acquire.

You and I have a special role in that process—protecting the one interest that isn't represented by any of the local lobbyists. That's the public interest. And that's what makes talking about short line railroads both a challenging and a rewarding experience.

WHY SHORT LINE RAILROADS CAN OPERATE SUCCESSFULLY WHERE THEIR LARGER COMPETITORS HAVE FAILED

With the possible exception of the Staggers Rail Act, there is no transportation development in this decade that has brought more benefit to shippers and consumers than the movement toward short line and regional railroads.

We've learned in the 1980's that short line and regional railroads can profitably operate trackage that is not self-sustaining under the very different economics of a Class I carrier—trackage that would literally have been abandoned and torn from the ground a decade ago. Two factors make that possible:

1. Short line railroads have more flexible cost structures than their larger competitors

One need not have a doctorate in transportation economics to recognize that the economics of a major trunk line and the economics of a light density agricultural branch line are not the same. A marginal branch line simply cannot operate under the same cost structure as a heavy density main line if rates on the line are going to be competitive and the line is to remain in business.

Unfortunately, it is very difficult (if not impossible, as a practical matter) for a Class I railroad to establish varying cost structures within the confines of a single system. Labor, and to a lesser degree management, have never been comfortable with agreements that permit employees to work on adjacent parts of a single system under differing wages, work rules, and conditions. Nor do the major carriers have significant latitude to vary the nature of the capital investments used on different portions of their systems. Fortunately, the smaller independent railroad does not suffer these diseconomies of scale.

a. Fixed Costs: The short line railroad can maintain a less costly equipment inventory, with power and rolling stock adapted to its own determination of shippers' needs. Its lighter traffic density allows it to maintain its roadbeds to different standards than a heavy density system, and to better control its infrastructure costs.

b. Variable Costs: Far more important is the fact that short line railroads—whether union or non-union—are generally free of the rigid craft lines and anachronistic work rules that typify major carrier labor management agreements. That enables the short line carrier to use the talents of a single employee on multiple tasks, rather than having to employ several individuals on a full-time basis when their services are needed only a portion of the time. This is not a wage issue—the great majority of regional railroads are unionized carriers, and even non-union short lines pay approximately 85 percent of national scale, with bonus provisions that can take the employee's earnings higher when volume is good. It is a size of force issue, and short lines are better able to match the size of their work force with the actual needs of the shipping volume they service.

It is important to recognize, however, that these cost advantages are not the only factor underlying the short lines' ability to compete.

2. Short line railroads can compete on pricing and service in areas where a Class I railroad can rarely be equally effective

The attention and resources of the major carriers inevitably focus on the things they do best, their areas of greatest profitability. Generally, they are the heavy density long haul operations. But light density lines live or die on their ability to serve the particular needs of a limited number of small shippers. The short line railroad's management philosophy is geared to that service, and short lines have large carriers' ability to compete with service in areas where large carriers find it difficult to do so. For example, a major carrier, concerned with equipment utilization over a 10,000 or 20,000 thousand mile system, must mesh pickups and deliveries on light density lines with the need to ensure effective equipment utilization over the breadth of its system. In contrast, a small feeder railroad can use lines costly equip-

ment to shuttle traffic back and fourth on a schedule that better fits the needs of local shippers.

The same point applies to nonservice marketing activities. The capacity of a small, locally-owned railroad to micromarket along light density lines on a car-by-car, shipper-by-shipper basis is unsurpassed. That is even more true when local shippers own all or part of the line, and have a direct financial stake in broadening its traffic base.

There are tangible examples of these factors at work throughout the United States. In fact, there has literally been an explosion in the number of small independent carriers created in this decade, and it is difficult to overstate the impact they have had in the preservation of America's rural rail infrastructure.

THE 1980'S HAVE BEEN AN ERA OF DRAMATIC GROWTH FOR SHORT LINE RAILROADS

To put the 1980's in perspective, recognize that of the small carriers now operating, 15 began operations in the 1950's. Thirteen more were organized during the 1960's, and—in the aftermath of the Milwaukee, Penn Central and Rock Island bankruptcies—44 commenced service in the 1970's.

In the first 7 years of the 1980's, 157 independent carriers have begun operation, bringing the current total nationwide to approximately 395. These numbers obviously reflect a more active effort by major carriers to rationalize their systems by shedding lines that have suffered from demographic and economic shifts. But they also demonstrate increased success in maintaining service over lines which 10 years ago would have been abandoned, pulled from the ground and sold for salvage. Even more encouraging is the fact that more than 80 percent of the lines established in this decade are operating successfully as 1987 draws to a close—a success rate that exceeds the average for startup businesses, and a rate truly remarkable when one considers that the lines being transferred are invariably the lowest density, most poorly maintained, and least successful lines in the Class I railroad system. It is no coincidence that as the number of successful short line transfers has increased year to year in this decade, abandonment petitions have fallen dramatically—from 4800 miles a year immediately before passage of the Staggers Act to approximately 1900 miles in 1986.

TWO FEDERAL POLICY INITIATIVES—ONE LEGISLATIVE, ONE ADMINISTRATIVE—LIE AT THE HEART OF THE SUCCESS EXPERIENCED BY SHORT LINE RAILROADS IN THIS DECADE

The proliferation of independent railroads over the past 7 years was not a coincidence either. It was driven by two policy changes at the federal level which significantly enhanced the economics of short line operations. These policies lie at the heart of the short line railroad success story.

First, of course, was the adoption of the Staggers Rail Act of 1980. The Staggers Act gave short lines the ability to enter enforceable shipping contracts. That enabled short line entrepreneurs to lock in their traffic base with a high degree of certainty—an essential element in dealing with financial institutions to arrange acquisition and rehabilitation financing. The Staggers Act also freed the short lines from the threat of the automatic rate protest—a process common in the pre-Staggers era, and one which small carriers are least able to afford. Most important, however, the Staggers Act gave the short line operator the pricing and marketing flexibility necessary to compete with the real competitor—the deregulated short haul trucker.

Equal in significance to Staggers was the policy position on labor protection announced by the Interstate Commerce Commission in the Gulf and Mississippi decision. In that case, the Commission made it clear that major carrier labor protection would not be automatically imposed in line transfers to newly formed, independent carriers. That was victory for jobs, a victory for service, and frankly, a victory for common sense.

The imposition of mandatory labor protection materially alters the economics of light density lines. It adds to the purchase cost without producing any countervailing revenue—increasing the need to borrow, weakening the carrier's cash flow, and by injecting both cost and uncertainty into the transaction, diminishing its appeal to potential purchasers. The more marginal the line, the greater the impact of these negatives.

Unfortunately, the impact does not end with the transfer of title to a light density line. Labor protection reduces the cash or borrowing capacity available to the new carrier for track rehabilitation, and burdens the already marginal short line with a cost of operation its trucking competitors do not have to bear. In Gulf and Mississippi, the cost of imposing Class I labor protection was estimated to range up to \$67

million—two to three times the actual purchase price of the line. By the time that case came before the Commission, it had become abundantly clear that mandatory labor protection was a major obstacle to preservation of jobs and service on light density lines. And it was that recognition which prompted the Commission to take the position it did. As the Commission itself wrote in its decision on Ex Parte No. 392: "It is our established policy that the imposition of labor protective conditions on acquisitions and operations under 10901 could seriously jeopardize the economics of continued rail operations and result the the abandonment of the property with the attendant loss of both service and jobs on the line."

The Gulf and Mississippi decision spurred short line development—and preserved service on scores of rural branch lines—because for the first time, it made preservation and sale of light density lines more attractive to the major carriers than the traditional remedy, abandonment.

For decades, carriers have preferred abandonment because, given the labor protection mandate attached to branch line transfers, abandonment was a far less costly option. If it sold the line, the carrier had to pay protection obligation for the entire work force. But if it abandoned the same line, those obligations could easily be avoided. The formula for avoidance was a simple one.

The major carrier would simply stop investing in the line in question, allowing the quality of service to deteriorate. As service deteriorated, traffic volumes fell, and carriers could lay off the employees—with no protection—under the decline in business clauses common to industry labor agreements. When only a handful of employees remained, the carrier would formally abandon the line. The few remaining employees did receive protection payments, but they were few indeed. Furloughed employees received no benefits, and both jobs and service on the line were lost permanently. Ironically, one thing labor protection did not do effectively was protect labor.

This was a cycle of deterioration that occurred in rural areas across the United States throughout the 1960's and 1970's. By reversing that cycle, the Gulf and Mississippi decision did far more than create incentives for short line development. It preserved service on countless agricultural branch lines, along with the jobs required to provide that service. It is not accident that in the years since Gulf and Mississippi, approximately 80 new short lines have been created—and abandonment filings have been cut in half.

THE TRANSFER OF LIGHT DENSITY LINES TO SHORT LINE AND REGIONAL RAILROADS PROMOTES THE PUBLIC INTEREST

The movement toward creation of independent railroads is the closest thing to a "win-win" proposition for shippers, employees and carriers that one is likely to find in the transportation environment.

Short lines benefit shippers and communities by preserving service of light density lines that would otherwise be targets for abandonment. By preserving transportation alternatives, they directly benefit consumers.

Short lines benefit the major carriers by allowing the Class I's to shed their least profitable lines without losing the traffic that originates on those former branch lines. Unlike an abandonment (or continued operation by a large carrier which cannot competitively price its services), conversion of a branch line to an independent feeder railroad does not surrender the traffic to trucks, but allows the major carrier to continue to carry at least a portion of the movements it formerly served.

Employees gain in two respects. The very concept of the spinoff railroad emphasizes job preservation, rather than elimination of jobs in return for protection payments to a few of the former employees. Moreover, by converting branch and secondary lines into feeder networks that can price their services on a more realistic basis, these line divestiture programs enable the Class I's to retain (and in some cases actually increase) the volume originating on these lines, rather than surrendering it to trucks. Retaining that volume betters job opportunities on the major carriers at the same time it preserves jobs on the former branch lines.

Safety and efficiency benefit because the new owners make investments in these lines that the Class I's were rarely willing to make. Be it as rudimentary as tie work or as complex as a rail replacement program, the investments made by short line entrepreneurs are often the first meaningful investments made in these lines for years, if not decades. Invariably, these lines are better maintained in the hands of their new owners than they were as unwanted appendages to a large Class I system.

It is simply better to place these lines in the hands of men and women who want to run them than to leave them owned by carriers with no interest in their future.

While there are no absolutes in this world, and individual projects will always have to be judged on a case-by-case basis, independent ownership is generally preferable to its two principal alternatives—abandonment, or continued ownership by a larger railroad with very different priorities.

IT IS IN THE PUBLIC INTEREST TO PURSUE LEGISLATIVE AND ADMINISTRATIVE POLICIES WHICH PRESERVE RAIL SERVICE BY FOSTERING THE ECONOMIC FEASIBILITY OF SHORT LINE AND REGIONAL RAILROADS

The future of short line and regional railroads is largely dependent on our common willingness to continue support for the policies that have permitted their success over the past half decade. We need to face the reality that most of the light density lines now being studied for abandonment will ultimately be abandoned if they cannot be cost effectively operated in the hands of independent owner-operators. It is in public interest to promote policies which do not constrain the economic feasibility of independent carriers because it is in the the public interest to preserve rail service wherever it is economically feasible to do so. If we are to achieve these objectives, there are several important issues that must be addressed in the years ahead:

1. It is essential to recognize the importance of Staggers Act rate making flexibility in the successful operation of a short line railroad. Protection of the Staggers reforms in an essential element in any effective rail service preservation policy.

2. It is essential to preserve the labor protection guidelines established by the ICC in the Gulf and Mississippi Case. Those guidelines provide a powerful incentive for carriers to preserve and transfer rather than simply abandon light density lines. Reversing that incentive is not in the public interest. Legislation which would limit the ICC's discretion, and impose protection on all line transfers, amounts to a direct trade-off between protection for a few people today, and continuation of service and jobs for many in the future. That is not a sound trade-off

3. It is important to recognize reasonable distinctions between larger and smaller railroads in the formulation of federal rules and policies. Compliance costs inherent in federal regulations place a greater burden on light density carriers, which have a smaller traffic base over which to spread those costs. While the public interest generally requires that railroads, regardless of size, meet the same safety standards, there is a sound argument for limiting the recordkeeping and reporting requirements applicable to smaller carriers. Consistent with that premise, FRA has exempted the smallest short lines from certain paperwork requirements associated with the safety regulatory program. We will continue to seek such opportunities in the future, and it will continue to be important for Congress and the administrative agencies to ease the compliance costs of new laws and regulations applicable to short line railroads whenever it is reasonable to do so from a public interest perspective.

4. On November 1, 1982, the FRA track standards were modified to permit continued operation on light density agricultural branch lines that would otherwise be unable to bear the expense of compliance with FRA standards. There are thousands of miles of deteriorated, light density rail lines serving elevators throughout the grain belt. For the shippers they serve, these are important connections. But their shipping volume is often too light to finance the type of maintenance needed to keep the track in conformance with FRA standards. To preserve service for shippers dependent on their marginally serviceable tracks, FRA established a special exemption to our standards when: there is no passenger traffic moving on the line, and no traffic moves at speeds in excess of 10 miles per hour.

There are many short lines operating today in the Midwest solely because of this "excepted track" provision. Our experience over the past 5 years demonstrates that retention of the excepted track rule is in the public interest from both a safety and an economic perspective.

5. FELA is an extremely expensive compensation system that works to the mutual disadvantage of small carriers and their employees. While FELA applies to all railroads, its burden falls particularly hard on smaller carriers, again because they lack an extensive traffic base across which to spread these costs. The Congress and this Administration must move this issue up on our list of priorities, and consider options ranging from revising the system (shifting it from a fault based to a no-fault system, thus protecting the worker while lightening the burden on the companies by reducing the middleman's share) to giving smaller carriers the ability to elect state workers compensation coverage.

6. In 1986, the ICC adopted a class exemption for line transfers to independent carriers. The exemption was an effort to promote short line organization by easing

the compliance costs associated with regulatory review. It was based on two premises:

a. the recognition that divestitures to non-rail entities do not raise the antitrust issues that normally form the basis for ICC review, and

b. recognition that time is truly of the essence in the consummation of these transactions. The projects involved are by definition marginal, and the costs associated with a burdensome and lengthy review proceedings may in and of themselves be sufficient to threaten consummation of the transaction. Moreover, the ability to ensure a smooth and timely exchange of ownership is essential to maintaining continuity in marketing and service.

These factors are as valid today as they were when the Commission approved the class exemption, and we believe the case for continuing that exemption is compelling. We do not, however, believe that there is anything sacrosanct in the current 7 day period. Nor would we oppose, in principle, a process that involves some distinction between the review accorded true short line divestitures, and that accorded relatively larger transactions. If such distinctions were created, however, they should be premised on density, rather than the number of track or route miles involved. Density is the primary factor which determines the marginality of any railroad system, and the factors which prompted adoption of the exemption were keyed to easing the expense of regulatory compliance for the more marginal lines.

This should not be read as support for any specific proposal to extend or alter the current exemption procedures. We believe, as a matter of policy, that the review period should be kept as short as possible consistent with the Commission's oversight obligations, and the need to provide interested parties with a reasonable opportunity to file statements of support or opposition. We do not, however, believe it is unreasonable for the Commission to review its exemption periodically to ensure that they remain consistent with this objective as the form and substance of these transactions evolve over time.

The key to providing adequate opportunity for public comment lies in the accessibility of information which would give interested parties a reasonable opportunity to evaluate the impact of the transaction of their interests. In this respect requiring petitioning parties to file more detailed information in their initial petition may be as effective or more effective than an extension of the 7 day review period. FRA would not object to a reasonable expansion of the data that must now be disclosed in a verified Notice of Exemption, so long as the mandatory disclosure does not extend to proprietary information on financial structure or marketing proposals.

The evolution of the short line carrier as an effective alternative to light density line abandonments is one of the most positive developments of this decade. If we work together to preserve the policies which have made the evolution possible, we can achieve in the 1980's what seemed like an illusive goal just a decade ago—an effective mechanism to stabilize and then preserve the 30-year deterioration of America's rural transportation network.

Senator EXON. Next, I am pleased to call for her testimony, Heather Gradison, the Chairman of the Interstate Commerce Commission.

Chairman Gradison, welcome to you once again. You have been before our subcommittee on many occasions, and we especially appreciate your coming over this morning to get your input and review of this matter that indeed does very much involve the Commission that you head with distinction.

Please proceed with your testimony, and then we will have some questions.

STATEMENT OF HON. HEATHER GRADISON, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY DAN CAMPBELL, DEPUTY GENERAL COUNSEL; AND RICHARD KLEM, DIRECTOR, OTA

Ms. GRADISON. Thank you, Mr. Chairman, Senator Kasten.

With me this morning are the Deputy General Counsel, Dan Campbell, and the Director of OTA, Richard Klem.

I have copies of my complete statement which have been submitted for the record, and I would like to briefly summarize.

Senator EXON. It will be accepted as a part of the record, and just so we can save some time, any and all statements by the witnesses that follow will be accepted as a part of the record.

Ms. GRADISON. Thank you.

More than 190 short line and regional carriers have started operation since 1980. Rapid development of this sector can be explained by several factors, including the 4R Act and Staggers provisions that eased abandonments, Commission rules that have streamlined purchases, institutional assistance at the local, State, and Federal levels, and most importantly, market conditions. Fierce competition often makes the development of low cost feeder services the only alternative to abandonment.

The Commission has undertaken a continuing study of the short line/regional phenomenon, and like the Congress, we believe the issue is of great importance and worth studying in detail.

To summarize some of what we have learned, we have contacted 183 short lines and 12 regionals and conducted on-site visits with more than 30 of those. Briefly, we found that the formation of the new roads has been constant since 1981, with an acceleration over the last 2 years. The table on page 4 of the full statement provides a breakout of this.

Speaking only of short lines and not the larger regionals, we found that they operate 7,600 miles of line, something less than 5 percent of the size of the total class I system. Short lines are located in 40 States, with heavy concentration in Pennsylvania, Indiana, New York, and Ohio. They carry a wide variety of commodities, average about 4,000 carloads per year, and employ a total of 1,600 individuals.

These carriers reported overwhelmingly that their relationships with the large connecting carriers were satisfactory. Joint rates and divisions were normally set at the time of sale and were mutually agreeable. Short line carriers operate some of the lightest density routes in the rail industry, routes that otherwise would have been likely candidates for abandonment.

There have been some that have not survived. But this has been the exception. Of the surveyed carriers, better than 70 percent rated their prospects positively, while only 11 percent were negative. Abandonments reached a post-Staggers low last year, and the development of short lines, conversely, reached a post-Staggers high. Jobs and service have clearly been preserved.

The Commission has also studied the situation of the regional carrier. At the time of this testimony preparation, we had surveyed 12 carriers in this category. They average over 500 miles of line compared with the 40 miles for the average short line. Average carloads per year on a regional road are 62,000, and normal employment is above 200. Seventy-seven percent of the work force is unionized.

Since there are fewer of these regional carriers, it is more difficult to generalize. The 12 carriers included to date are listed at page 9 of our prepared testimony. There are several new candidates for this list, but inclusion is limited to those that have begun service prior to October 13.

They have all been surveyed by the Office of Transportation Analysis, the group conducting our study, and I have more detailed information on each of these carriers which I would be happy to supply to the committee.

The safest generalizations that can be made about the regional carrier are, first, that a commitment to the local market and increased labor productivity are essential for success; and second, that careful attention to the details of acquisition is equally important.

Price, available traffic, condition of the line and commitment from connections are essential items that will have a great deal of impact on future operations.

To conclude my summary, I would like to note that the growth of short lines and regionals is something of a surprise, a welcome one. It has included some growing pains, and the size of certain transactions has certainly given the Commission pause.

The largest to date, the Wisconsin Central purchase from the Soo Line, was put on temporary hold while the Commission studied the matter more closely. Several other sales have also been given additional study.

Most recently, we have issued a notice of proposed rulemaking to consider a modification of the exemption process by which we handle regional sales. Public comments are due in early November, and when they are in we will have a thorough look at the way the existing rule has functioned. This, I believe, has been the source of substantial criticism this morning. The Commission has taken a look at this. It is out for public comment, Ex Parte No. 392 sub 1.

We specifically targeted for inquiry the one week processing period and the amount of information that applicants file. I know the Commission does not want to spoil a system that has worked quite well, but there are transactions of a size and impact that may benefit from public input before we authorize the go ahead. That is what we are looking at.

That concludes my summary statement. The Commission's full statement has been submitted for the record, and I am available for your questions.

Senator EXON. Thank you, Ms. Gradison. I would be glad to yield to the ranking member of the subcommittee.

Senator KASTEN. Mr. Chairman, thank you. I just want to make a comment.

The Lake States sale was strongly supported by shippers, by the State of Wisconsin, by local governments, by civil organizations, by chambers of commerce and all sorts of different kinds of groups. I am happy that the Commission lifted its stay so that the new railroad, the Wisconsin Central Limited, could commence operations.

I think it is important that this committee work with you to look to see how those procedures have worked. I encouraged you to lift that stay. I know there were thousands of us that wanted to see this whole process take place. I guess we are lucky that it is under way.

Now, I think we can look together, with the ICC, all of us, to see if there are problems. If it is a density question or a mileage question or a volume question or whatever, maybe we should not, but we want to work with you.

I am pleased that that sale has now been able to commence and to go through, and I look forward to working with you as we review what has taken place.

Ms. GRADISON. Thank you, Senator.

Along those lines, we did stay the Lake States transaction. It was the largest transaction that had come before the Commission. It was almost 2,000 miles in length. We reopened it for public comment. We did remove the stay. We almost blew it. If we had not removed the stay, there are strong indications that that transaction would not have taken place.

Once again, with the volatility of the financial markets, that is indeed a concern with regard to the *Montana Rail Link* case. The participants in that exchange do have an exemption in hand. If the Commission becomes involved in a way beyond our current revocation review, it may in fact prevent that transaction from going forward.

Senator EXON. Thank you very much.

Let me follow up on the good question raised by my colleague. As I take it, though, Ms. Gradison, the actions of the ICC in the Lake States transfer were almost totally different from the actions of the ICC with regard to the *Montana Rail Link* case. In the *Lake States* case there seemed to be general agreement by all parties involved that the transfer was good, including agreement by the State government. The only opposition, as I understand it, was from the railroad unions. In that instance you thought it was wise to step in as you did as a commission and delay the sale, and maybe you almost blew it, in your words. We do not know whether that is true or not, but it is a possibility.

Were you so frightened of almost blowing that that the majority of the ICC may be now going overboard on much shorter review than would ordinarily be necessary? I think that is a legitimate question, and I want to know if you would answer it.

Ms. GRADISON. Yes, sir. I am not frightened of anything.

Senator EXON. I know that. You do not have to tell me that. Nor am I.

Ms. GRADISON. You have nothing to be afraid of. I am trying to do my job here, and I think that we have a common goal. That common goal is to promote jobs and service in the transportation community.

The transactions that have taken place are subject to a revocation process in the event they are filed under the exemption, the class exemption in Ex Parte No. 392 sub 1. When we put that exemption into place, public parties and individuals were given the opportunity to comment on the process. In addition, that process was put into place only after we had substantial experience. Over 100 individual cases were processed prior to our placing the class exemption in place.

Today, we have a problem. The transactions are larger in size than we anticipated. When we received these larger transactions, we reopened Ex Parte No. 392 sub 1 to take public comment on exactly that.

What can the Commission do or how can the Commission do a better job of reviewing these transfers? The problem in *Montana Rail Link* is that those individuals currently have an exemption in

hand. We are now reviewing the revocation petitions. There will be substantial information about this transaction reviewed by the Commission before we render a decision on revocation.

Senator EXON. Let me ask this question. These may be some areas that you, as the ICC, are not involved in; if so, I will understand why that should not be part of your deliberation.

Just as a little background of information from the record, as we continue to look down the line on these mergers and sales and so forth that hopefully benefit the communities and everybody, as I think one would generally agree has been the case with most of the short line or regional sales—as I said earlier, I am not against these, *per se*—has there been any consideration given or is it addressed in the Staggers Act what consideration should be given to the Federal Government where land grants were given in the early days to some of these railroads as an incentive to build a railroad not so much for the profit of the road but to open up the west and certain cities?

Now, as I understand it, some sizable land grants were given to the original railroad, Northern Pacific I believe it was, and the case of the 800-plus mile line that we are talking now. When we come up with these sales and mergers, those land grants that were given years ago by the Federal Government for the specific purpose of providing transportation, are those considered the sole property of the railroads to use for their own profit, or has there been any consideration given that when a property has been granted under land grant that some or all of that should revert to the Federal Government?

Does that ever come up in your deliberations or consideration?

Ms. GRADISON. I am getting all kinds of input from my staff here. I do not know.

One suggestion was that I simply say that was before my time.

Senator EXON. I can tell that by looking at you. Ms. Gradison.

Ms. GRADISON. I do not know.

Senator EXON. Well, I think maybe it is something that we should begin to take a look at on some of these propositions, and I suspected that that was not in your jurisdiction but I wanted to make the point.

Have you as a commission been fully advised of all of the transactions and agreements that have gone on between the Burlington Northern and the proposed purchaser of the road? Are you familiar with all of the financial details?

Ms. GRADISON. No, sir, we are not. We currently have before us petitions for revocation. Within that analysis, it is entirely likely that we will ask for additional information from the parties.

To date, we have not yet required it. The parties have the exemption in hand. They are allowed to go forward and consummate the transaction. They do so recognizing that the Commission can exercise revocation.

Senator EXON. Excuse me. You mean by that, Ms. Gradison, even though the sale would go through on October 26 as now planned, you as a commission retain the right to rescind the sale?

Ms. GRADISON. Yes, sir.

Senator EXON. For how long?

Ms. GRADISON. As long as we care to.

Senator EXON. Indefinitely?

Ms. GRADISON. Yes, sir. That is the way the revocation procedure works, and the parties recognize that when they make application with the Commission. They can use the Ex Parte No. 392 sub 1 exemption when they make application for the transaction, or they can use the application procedures of section 10901 of the statute. I know with the 10901 formal application and decision, there would not be revocation. It would entail a much more lengthy review by the Commission.

We feel that we can do a just analysis of this. It is our responsibility to make sure that we thoroughly analyze the petitions for revocation. Whether or not that analysis is completed prior to the consummation or afterwards really should have no bearing on our result.

If our result says that the transaction should be revoked, then it will have to be revoked. If our analysis says that it does not need to be, then they can continue to function after consummation.

So that is why I am a little bit concerned about postponing consummation when we have this tool in hand that would take care of it in the event there is a problem.

Senator EXON. Continuing my question along those lines, we have heard considerable testimony today and previously that the timing of the consummation of these sales is critically important. Indeed, you, yourself, testified a few moments ago that you almost blew it on the line in Wisconsin.

Would it be fair to say that other than in the most extreme of circumstances, it is not likely that the ICC would revoke a sale after it has been consummated?

Ms. GRADISON. That is correct.

Senator EXON. I can imagine the problems for the purchaser and the seller and the people that are putting up the money for these if 30 days or 30 months after a sale the ICC came along and said wait a minute, it is all off.

Ms. GRADISON. The justification for revocation would be fraud or misrepresentation. We had one instance where initially we believed it was a noncarrier that was making the acquisition when it turned out that, in fact, it was a carrier, and we required labor protection be imposed. It was, and the transaction stayed in place after that labor imposition.

We would not revoke something lightly. To date, we have not had any major revocations, and it would be based on a record that there was some fraud or misrepresentation or abuse.

Senator EXON. Well, the facts of the matter are for most of the things we have been discussing and talking about here today and most of the anticipated difficulties and dislocation that anybody that is concerned about those things need not worry about the chances of revocation because that will be over and done with if this sale is consummated on October 26. Is that right?

Ms. GRADISON. I am not sure I understand the question.

Senator EXON. Well, let me try it again.

We have not been talking about fraud that you just outlined. I could understand if you had outright fraud you could revoke the sale that is now scheduled to be consummated on October 26.

All of the other issues regarding 3 months down the line it is discovered that the new owner does not have the financial wherewithal to continue the road, for example, or the service that is being rendered by the new line is so poor that the people in the affected area say let us go back to Burlington Northern because this just is not working.

Those types of things would not be reason for the ICC to revoke or change the granting of the sale. You could not patch those things up, could you?

Ms. GRADISON. The Commission could partially revoke any portion of the exemption if we chose to. In the event the acquiring carrier were to be unable to meet its obligations, the Commission has powers to provide for directed service over the line or to deal with that situation if it were to come into place.

Senator EXON. Explain to me, Ms. Gradison, how you as Chairman view the obligation of the ICC on matters of this type.

I think I basically understand that you look at it from the standpoint is this a viable sale? Does it have a chance of success?

You look at it from the standpoint as to whether or not the sale is likely to continue to furnish acceptable, timely transportation in the area. That would be one of the things that you consider; is that right?

Ms. GRADISON. Yes, sir.

Senator EXON. Do you have any responsibility in the law whatsoever or do you make it a part of your determination as to any rights that this line has? Do you take a look at that at all?

Ms. GRADISON. Yes, sir, we do. Our goal is to preserve service and jobs, and these transactions by and large have done exactly that.

If you refer back to the charts that John Riley had here today, you can recognize that employment on most of these regional lines has, in fact, gone up, has increased over the service of the acquired carrier.

Our objective is to make certain that each community that has shippers can have reasonable transportation available so that we will have an economic transportation system.

The long-term goal with Staggers revisions and with short line rail acquisitions and transfers is to have a viable surface transportation system, and this exemption is one positive outcome of the Staggers Act.

Again, we recognize that some of these transfers are larger than we had ever anticipated. That is a success. That is an example that the investment community is willing to put money into railroads and the rail industry. That is very important. We were not seeing that in the 1970's, so it is refreshing to see it in the 1980's.

Senator EXON. The other railroads that were referred to, the success stories of short lines and regional railroads that Mr. Riley had before us today, have you been in on all or most of the decisions of the ICC on most of those roads?

Ms. GRADISON. Yes, sir.

Senator EXON. Generally speaking, were most of those roads on the brink of abandonment at the time that the sale was made?

Ms. GRADISON. No. Each one was different. There were some that were, in fact, bankrupt. There were some that were operated by a class I carrier, and the class I carrier no longer felt that the owner-

ship and the maintenance of the line was viable or in its long-term interest.

We reviewed each one of these on an individual basis. The Gulf & Mississippi was over 700 miles. We reviewed that one thoroughly, inside and out, upside down, inside out, and it did not change the transaction other than to delay it.

Now, with regard to the *Lake States* case, we did provide a thorough analysis of that in a very brief period of time, so it can be done. That is why we are looking at the Ex Parte No. 392 sub 1 guideline. We are concerned that we need a little more time to review the heavier density transactions than we have had in the seven days.

I would also like to comment on the 7 days. The 7 days is for the Commission to review. The public had its turn to comment when we approved Ex Parte No. 392 sub 1 initially. We took the public's comments into consideration when we put those rules into place.

For these individual transfers, the seven days is for the Commission to pause, to review, to analyze, and by and large we have found the Ex Parte No. 392 sub 1 guidelines to be very effective and, frankly, have promoted the growth and the development of these regional lines.

Senator EXON. As I take it from your testimony, you do feel you have a responsibility to at least take a look and see how the workers would be affected by these sales; is that right?

Ms. GRADISON. Yes, sir. In fact, when we analyzed the industry, we interviewed union heads. We interviewed laborers. It is important to understand the impact on labor. It is important to understand that they will have a trained work force, a capable work force.

One of the concerns in this Montana case that has been mentioned was with regard to safety. We recognize that the safety standards for short lines are identical to the safety standards for Class I carriers, so we have not found any problems in the training of the individuals who operate these lines.

Senator EXON. Ms. Gradison, I was in Montana on Sunday, the day before yesterday. I had a listening session, and there were over 300 employees of the road in question there. I must say, I have had considerable experience in meeting with people, and I have never seen a group of people so concerned. Maybe distraught is another word.

I can understand that. You can understand that. We are all distraught when something happens in our lives that at least threatens a change. Sometimes that may be overblown. I think, generally speaking from what I know and the laboring people that I have talked to that are on some of these success stories that were in evidence here this morning by Mr. Riley, that things have worked out well. Things have worked out better than they had expected.

The people that were at this meeting on Sunday that I attended in Montana in Livingston were extremely upset. I have heard a lot of this. I have a letter here by one of the workers that said, "Burlington Northern, during this time of the sale, has not approached its workers with any information at all, leaving us strictly in the dark."

Here is another letter from a lady that had a particularly difficult case, a son that has a very, very serious disease. She has been told that if they go with the new line that the health insurance under the new owner would not cover her son's illness. It's cost is in the area of over \$1,000 a month.

Is it your understanding that Burlington Northern has not been forthcoming to all of their employees that would be affected in stating to them the options that would be available to them?

They have options. They can either go with the new line, which I think a lot of them would like to do if they do not get hurt too badly.

I think some of them are attracted to the possible advantage that profit sharing has with some of these entrepreneurs who have done a pretty good job. Mr. Washington has told me that that is a key part of his plan, and I think Mr. Washington is a very talented individual who has some proven business experience. I generally tend to take what he says at face value. I do not think he is trying to mislead me. That is his intent, at least.

I get the clear feeling that the present employees do not know whether they should go or what options they would have with regard to bumping, under the seniority rule, their fellow employees working on the northern line of Burlington Northern.

Is it surprising to you and do you think it is true that there has been no real input to the workers by Burlington Northern? I will ask that question of the following witnesses, but I am asking it from your perspective as Chairman of the ICC.

Ms. GRADISON. Our understanding was that there had been substantial input from the BN to the employees. One of the first things I will do when I get back to my office is look into whether or not that is true.

Our understanding was that, in fact, they had worked very hard at informing the employees. So if that is not the case, it will be certainly one of the things that we review in our analysis of these revocation petitions.

Senator EXON. I appreciate that, Ms. Gradison, and I thought that might be your attitude.

All that I can tell you is what I am being told, and that is why we are holding this hearing, to try to get to the bottom of some of these difficulties. I am glad that you are interested in knowing whether that is a fact or not.

Ms. GRADISON. It is perfectly reasonable for the selling carrier to advise the employees as to what their options are in a fair, understandable, meaningful way. Certainly, we would expect that of the Burlington Northern or any other carrier participating in one of these transactions.

Senator EXON. Likewise, it would be fair for the prospective buyer to explain in some detail as to what the options would be if the employee chose to go to work for them. There seemed to be an awful lot of questions out there.

A key question that came up, I think, from at least 10 different people on Sunday when I held that meeting was that they had no idea what was happening, except that it appeared to them from the sketchy information that they had received through rumor, hearsay and newspaper articles, that they might only have 1 or 2 days

for getting all of the information that they need to chart their future career with whatever situation that presents itself to them.

They thought that 1 or 2 days was not sufficient time for them to make a decision. One woman, in particular, got up and said my husband has a temporary situation where he is just not in a position right now to make a determination. I think he is laid off at the present time because of illness, and he just could not be expected to make a determination of what he should do to protect himself.

Again, I do not know whether all of these things are accurate or not, but I wanted to relay to you my concern.

My last question to you: In view of the considerable difficulty that we have here, recognizing that we are running a risk that this deal might fall through but also saying that if this deal would fall through, I do not believe that it would be any long or short-range adverse impact on the people that work for and live in the southern part of Montana, since I think this is not a road that is going to be abandoned.

Ms. GRADISON. It is not in immediate danger of being abandoned. This is an opportunity. It is an opportunity to bring a second carrier into the State of Montana. It is an opportunity for the workers to participate in a profit sharing program. It is an opportunity for the Burlington Northern to receive a return on a substantially redundant line that exists within the State of Montana.

I am not in a position to judge at this time whether or not the Burlington Northern would be planning on abandoning the southern line. As John Riley outlined earlier, however, if they would care to shift the traffic to the northern line, they certainly could do that.

If the citizens of Montana are feeling uncertain and concerned about this transaction, it is perfectly understandable. It is a considerable fear of the unknown. We do have a proven businessman who is making the purchase. The Commission is analyzing all of the concerns that have been presented to us. We will be requesting additional information from the parties.

The parties, as I said, are free to consummate the transaction. They do have the exemption in hand. The Commission will complete its analysis on revocation sometime within the near future.

Senator EXON. After October 26?

Ms. GRADISON. Yes, sir. We are just not in a position to render a decision today. We only completed receiving a series of comments last week, and after analyzing those we may be requesting additional information from the parties.

My responsibility is when we do have petitions to revoke to do as thorough an analysis of the information we receive as we possibly can, and I believe that you and I agree that that is what we should do and not render a hasty decision on that.

Senator EXON. I am not sure we agree. It kind of depends upon how you come at this. If you are telling me that I should be primarily concerned about the Cornhusker Big Red football team's games for the remaining part of this particular season, I am, but it seems to me when we are talking about revocation we are talking about next year's season, and I should be concerned about that. I am also concerned about that.

I guess, though, that I think it might be somewhat unfair to indicate that any problem that now is on the minds of the people who have talked to us about this and on the minds of some of the people that are going to testify here later on today that that really is nothing to worry about because if there is a grievance, your reconsideration of this will solve it.

I do not think that is a fair impression to leave because I suspect that we had better say up front that if this sale goes through on October 26, whether it should or not, if it does go through there is not much of a chance that those who feel aggrieved or possibly aggrieved by this procedure at the present time could look for relief to the ongoing process of the Commission.

Is that a fair statement?

Ms. GRADISON. Let me ask you a question. What standards would you use to suggest that this transaction should not take place?

Senator EXON. You know, it has been customary—one of your problems, I must tell you, Madam Chairman, is that I am not sure, even though your husband is a member of the House of Representatives, that you understand the procedures in the U.S. Senate.

Once again, I am not feared by your question and I will give you an honest evaluation. I am telling you very directly that I do not think from what I know that the ICC has discharged its responsibility in this area.

I think you asked me what are some of the things that I would look at. If you have been listening, I have been raising questions on a whole series of things that I think you should look at.

I am also telling you that I think it is false and misleading for you to sit there and testify that there really is nothing to worry about because in the reassessment process, the ICC can review all of these concerns.

The point that I am trying to make, and I will answer your question this way, if I was on the ICC, I would have made several decisions considerably different from the decisions that have been rendered by you and the other members who have customarily voted with you on the ICC.

Now, I do not know whether you are right or wrong, but since you asked me a question, I would not have pushed the button in many instances the way you have.

Let me ask this question of you. Since there has been a three to two vote to go ahead with this sale on October 26, is there any way that we could get you to be the swing vote, to delay at least for a number of days that final October 26 date until we had a chance to straighten out some of the misunderstanding that is replete with this particular sale?

Ms. GRADISON. I wish that I could give you an open and honest and forthright, direct answer. I have a petition to revoke before me. If I were to respond to your question, I would not be able to participate in the proceeding.

In an effort, therefore, to avoid any need of recusal, I have to respectfully decline a direct response to your question, Senator.

Senator EXON. I can understand that, and if I were in your position I would have done the same thing. Thank you, Ms. Gradison.

Senator Adams.

Senator ADAMS. I will not question at length. Mr. Chairman, I do not know whether you have voted yet or not. I will be pleased to take over the chair for you when you want to do it.

Senator EXON. I will be back as soon as I can.

Senator ADAMS [presiding]. I have a very direct question. You asked a question, and I will give you an answer.

This is part, as I remember, of the old three-tier system that ran through Montana and to the coast consisting of the Milwaukee, the Northern Pacific and the Great Northern; is that correct?

Ms. GRADISON. Yes, sir.

Senator ADAMS. And that the Milwaukee line was attempted to be kept alive, and it was starved to death because it could not compete against the combined Great Northern and Northern Pacific, so it has gone the way of being not only abandoned but liquidated; is that correct?

Ms. GRADISON. It has been liquidated, but whether or not it was starved as a result of competition is certainly subject to question.

In fact, it was starved as a result of lack of investment in the line, and that is the very concern that the Commission has with regard to the southern tier, is that it may in fact—

Senator ADAMS. The southern tier, Madam Chairman, is part of what was left, which was the two-tier system that was left through the northern tier of States; in other words, the old Great Northern and Northern Pacific. So you will have left one main line and a regional line and an absolute monopoly which you are by law required to regulate and watch.

This monopoly can determine where the freight will go on that line, whether it goes on main line or on regional line, because they are part of the same system.

So our question is not how you are going to vote, because I agree with what the Chairman said, but in answer to your question, are you going to exercise the powers that the ICC was created for to maintain service in an area where you have not a traditional short line stub but a parallel main line to which traffic can be put on or taken off by those who control traffic at both ends in a monopoly situation. That is all. Very simple.

Ms. GRADISON. The Commission does not have a question before us as to whether or not to participate at this time. We had an exemption petition filed in July.

Senator ADAMS. Do you consider this as a class exemption case that was set up for short lines when you have an 800-mile main line?

Ms. GRADISON. The parties currently have the exemption in hand. The Commission, in response to concern about the size of a number of transactions that were beginning to be filed at the Commission, responded by reopening the class exemption proceeding Ex Parte No. 392 sub 1.

We have reopened that. We are currently taking comments from the public and the parties on the class exemption process to determine whether or not those rules should be altered. The date for comments on that closes November 5.

Senator ADAMS. Thank you, Madam Chairman.

I will move over and take over for Senator Exon.

Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you. I just have one further question.

The situation right now as I understand it is that both lines are controlled by the same company. A monopoly situation exists right at this moment.

Ms. GRADISON. That is correct.

Senator KASTEN. So, in theory, there may be an opportunity for competition at least within the State that does not exist at this time.

Ms. GRADISON. That is absolutely correct. We have a situation today where the shippers, in fact, will not only be no worse off, there is an opportunity for more traffic, more jobs, and a reopening of the locomotive shops at Missoula.

So there are many positive potential outcomes of this transaction. The Commission does have the petitions to revoke before us at this time. They are under review, but to date we have not seen any justification to prevent the exemption from being used in this particular transaction.

The transaction sizes as we have seen them being filed in recent months has given us pause, and that is why we have reopened Ex Parte No. 392 sub 1 for comments.

Senator KASTEN. Let me ask just one final question.

John Riley in his discussion with us indicated that the size was important but also the density, the traffic, the volume is important as we review these.

Could you comment on that same question? It was length of track, total miles versus density and usage.

Ms. GRADISON. In fact, that is one of the things we are taking comment on in this Ex Parte No. 392 sub 1 reopening, in fact whether or not it should be density or distance or a combination of the two that would determine whether or not we should have a longer period for comments.

So the density is the key element rather than the distance.

Senator KASTEN. Thank you.

Mr. Chairman, thank you.

Senator ADAMS. Thank you, Senator.

Thank you, Madam Chairman and those who came with you. We appreciate your testimony.

[The statement follows:]

STATEMENT OF HON. HEATHER J. GRADISON, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to present the views of the Interstate Commerce Commission and to report its activities regarding short line and regional railroads. I will begin by discussing briefly the distinguishing features of these railroads and why their number has grown in recent years. Then I will share with you findings from our ongoing study conducted by the Commission's Office of Transportation Analysis. Finally, I will delineate various actions the Commission has taken to expedite the formation of short line and regional railroads.

BACKGROUND

There are 18 Class I railroad systems in the United States today. They are currently defined as railroads with annual revenues exceeding \$88 million. (Of course, several of the larger ones generate revenues in excess of \$3 billion annually.) Class II railroads, with annual revenues between \$17 and \$88 million, number about 25.

Class III railroads, with annual revenues below \$17 million, number more than 400. While no strict definition of "short line" or "regional" railroad exists, these terms largely correspond to the categories of Class III and Class II railroads, respectively.

Over 190 short line and regional railroads have begun operating since passage of the 1980 Staggers Act. Reasons for the proliferation of these railroads are several. First, legislation has made it easier for major carriers to abandon unprofitable lines. Both the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and the Staggers Rail Act of 1980 accelerated the abandonment process. As a result, both the need and opportunity has arisen for shippers, states, and entrepreneurs to operate these same lines. Second, administrative decisions by the Commission have been instrumental in the formation of new short line and regional railroads. Detailed later in this testimony are such actions as Ex Parte 392 (Sub-No. 1) which have expedited change in ownership and operation of selected lines from large carriers to smaller railroads. Third, institutional support such as rail planning and financial assistance of the Federal and State levels have helped spur development of new short line and regional railroads.

Finally, economic conditions in the freight transportation industry have given enormous stimulus to the formation of new, smaller lines. For example, declining U.S. tonnage and intense competition from trucks have caused numerous low density rail lines to become only marginally profitable or outright unprofitable. In either case, such lines become candidates for operation by smaller, lower cost railroads.

The combination of these factors undoubtedly portends continued growth in the number of short line and regional railroads in the United States. We at the Commission encourage the growth of small railroads. After all, perhaps the most significant aspect of these short line and regional railroad operations is that they usually fill a transportation need more effectively and profitably than trunk line carriers can. Where a line is being abandoned or is targeted for abandonment, the continuation of service by a smaller railroad means benefits to the operator, the shippers, and the community. The growth of short line and regional railroads maintains this desirable continuity.

ICC SHORT LINE AND REGIONAL RAILROAD STUDY

To improve our information on short lines and regionals, the ICC's Office of Transportation Analysis has gathered data on the 195 railroads that we have identified as having begun operation since 1980. This group includes 183 short lines and 12 regional railroads.¹

Both short lines and regionals have been surveyed by means of a brief questionnaire. This questionnaire was directed to carriers by telephone and in some cases by mail as well. It was intended to provide summary characteristics of the operations, to clarify the relationships these carriers have with larger railroads, and to obtain carrier views of their long term prospects. In addition to the questionnaires, on-site interviews were conducted with 29 short lines and 5 regionals. These were conducted largely to gain insight into labor concerns.

For the most part, the information that follows is based on both the surveys and the on-site visits. It should be noted that we were only able to contact railroads currently in business. Nonetheless, we believe the responses do provide a useful and current profile of new short line and regional railroad operations.

PROFILE OF NEW SHORT LINES ²

The table below indicates the year in which the short lines contacted were established. Overall, growth in new short line railroads has accelerated since 1981 with significant gains occurring in 1986 and 1987 (projected).

¹ We have defined regional railroads as those carriers 250 miles or larger. The U.S. DOT's Federal Railroad Administration also uses a 250 mile definition, and as a practical matter we have chosen 250 to minimize inconsistency among major data bases. Whether a 150, 200, 250, or 300 mile definition is chosen, however, the resulting stratification of newly formed regionals and short lines would be similar: approximately 9-16 regionals, and the vast majority short lines.

² This section excludes the 12 regional carriers, discussed separately in this testimony.

YEAR ESTABLISHED

Year	Number	Percentage of total
1981.....	16	8.7
1982.....	23	12.6
1983.....	20	10.9
1984.....	30	16.4
1985.....	25	13.7
1986.....	41	22.4
1987.....	28	15.3
Total.....	183	100.0

These short lines operate a total of 7,591 miles of line (less than 5 percent of the total mileage operated by all freight railroads in 1986). Forty-seven percent were 25 miles or less in length, with the shortest line 0.5 miles long and the longest 200 miles. A total of 1,629 individuals were employed full time by these railroads. Of the full time employees 168 (approximately 10 percent) were union members. A few of the short lines also used part time or temporary employees (132 employees). Only 14 of the short lines had union employees. In all but two of the situations where a union was present, the railroad had negotiated concessions from the union. These included: lower wage rates, two or three man crews, cross craft assignments, and the elimination of cabooses.

DISTRIBUTION OF SHORT LINES BY MILEAGE

Length of line (miles)	Number of railroads	Percentage of railroads	Total miles	Percentage of total miles
1 to 5.....	30	16.4	81	1.1
6 to 10.....	20	10.9	172	2.3
11 to 25.....	36	19.7	586	7.7
26 to 50.....	44	24.0	1,542	20.3
51 to 75.....	17	9.3	1,029	13.6
76 to 100.....	15	8.2	1,297	17.1
Over 100.....	21	11.5	2,884	38.0
Total.....	183	100.0	7,591	100.0

GEOGRAPHIC SCOPE OF OPERATIONS

The short lines we have identified serve 40 States, with the heaviest concentration in the Northeast and South. States with the largest number of short lines were:

State:	Amount
Pennsylvania.....	21
Indiana.....	11
New York.....	11
Ohio.....	11
Colorado.....	10
Tennessee.....	9
Illinois.....	9
Mississippi.....	8
North Carolina.....	7

TRAFFIC

Approximately 672,000 carloads of traffic are handled annually by these short lines. The mean volume is approximately 4,000 carloads. Thirty-eight of the short lines haul 1,000 carloads or less per year. Volume of traffic ranges from a low of 2 carloads per year to a high of 100,125 carloads. Although a wide range of goods are transported by short lines, they predominantly haul bulk commodities. The major commodities, ranked by number of carriers are:

Commodity:	Number of respondents
Agricultural products including grain and grain products	80
Lumber and lumber products	73
Chemicals	68
Paper and paper products	38
Fertilizer	27
Coal	26
Plastics	23
Scrap metal	22
Steel and steel products	15

RELATIONSHIPS WITH LARGE CARRIERS

In order to assess the relationships between short line railroads and the larger railroads they cannot with, OTA asked the carriers to describe their interaction with connecting carriers. Twenty-nine percent of the respondents indicated that the relationship was excellent to good, and 24 percent described the relationship as "okay" or "pretty good." Only 3 percent of the responding railroads said that the relationship was poor.³

As further evidence of the good working relationship between short line and larger railroads, many of the respondents also reported that the connecting carrier was highly cooperative and provided numerous essential services, such as furnishing cars or special equipment; joint marketing efforts; billing, collection and revenue accounting services; and car hire and car tracing.

OTA also sought information on how divisions were established and whether this was a problem area for short line railroads. Many lines reported that divisions were established by contract or through negotiation. Switching roads simply responded that they were paid a switch fee directly. Some lines indicated that they were able to establish their own proportional rates on some commodities. Finally, a few short lines indicated that they used historical divisions subsequent to the creation of the new line. Only eight of the respondents indicated that establishing divisions was a problem area. Of these, four felt rates were not competitive or wanted higher divisions, three indicated that they had difficulty in negotiating divisions on new traffic, and one complained about delays in receiving payment from the connecting carrier.

One plausible explanation for the lack of problems with divisions is the fact that most short lines know their divisions prior to beginning operations. Because divisions are part of the overall negotiations for the line, a completed sale presumes satisfaction with the division arrangement. If the prospective buyers are dissatisfied with the arrangement offered, they simply do not acquire the line.

PROSPECTS FOR THE FUTURE

The vast majority of short lines believed that their future prospects are positive (72 percent), while only a small minority (11 percent) had a negative assessment of their future (the balance were neutral or did not comment). Those that viewed their operations as successful attributed their success to a variety of factors. The most significant factor was the development of new business followed closely by labor efficiency and labor cost considerations. To a lesser extent, they indicated that effective marketing, services tailored to the needs of the shippers or stable traffic patterns had a positive impact on their assessment of the future.

The lines that were pessimistic about their future attributed their problems primarily to a lack of traffic, a decline in traffic, or that anticipated traffic did not materialize. Other factors less frequently cited included: insurance problems; truck competition; poor relations with larger carriers; expense of maintaining the right-of-way; the failure of local government to purchase a leased line; being captive to a single connecting carrier.

PROFILE OF NEW REGIONALS

In addition to the short lines contacted, OTA surveyed twelve regional railroads.⁴ This group of railroads operated 6,027 route miles, ranging between 280 and 824

³ The balance of respondents either simply identified their connecting carrier with no comment on the quality of the relationship, or they did not answer this question at all.

⁴ These twelve railroads were the Gulf and Mississippi Railroad Corporation, Iowa Interstate Railroad, Ltd., Midsouth Rail Corporation, Chicago, Central and Pacific Railroad Company, the Dakota, Minnesota, Eastern Railroad, the Paducah and Louisville Railroad, the Washington Cen-

Continued

miles. They hauled approximately 700,000 carloads, ranging between 20,000 and 165,000 carloads each.

Regional railroads typically differ from short lines in several significant respects. Besides route miles and traffic (an average 548 miles vs. 41 miles; and an average 62,000 carloads vs. 4,000), there are other important distinctions. The number of employees is typically much higher, ranging from 20 to 536; the average 210 employees contrasts with a short line average of 10. The regionals are more unionized than short lines: 77 percent of employees vs. 10 percent. Finally, while both regionals and short lines handle bulk traffic such as coal, lumber, and agricultural products, regionals more frequently handled manufactured goods in either boxcars or trailers-on-flatcars.

LABOR RELATIONS

Both lower wages and improved productivity give short line and regional railroads an operating cost advantage over Class I railroads. While surveyed carriers stated that both factors were important, flexible work rules were the more crucial component. For some short lines, labor may frequently be part-time or performed by individuals who also act in a managerial or sales capacity. For the regional carriers, labor relations are much more likely to be structured according to standard craft divisions, and among the largest, unionization is more common than not. Where unionization exists, representational leadership may be the same as prior to the transfer of lines. However, there are in all cases major differences between standards for compensation or work rules, or both. Although wage rates may be below the national standard for a given craft, this is not always the case, and profit sharing plans may exist as wage supplements. In all cases there are significant productivity-creating modifications from the rules and working conditions that constitute the Class I norm.

The Commission has adopted a general policy against the imposition of labor protection in the formation of short line and regional replacement carriers. It is the Commission's view that development of these lines has a beneficial effect on the provision of rail service and the prospect for rail employment as well. We believe that labor protection would accelerate job loss in the industry. However, the Commission's policies have been challenged by labor. The ICC has largely been upheld in the courts. Nevertheless, we are continuing to study the impact on labor. To date, nothing has been developed to disturb our preliminary understanding that there is a high percentage of "re-hires" (employment of individuals formerly employed by the departing carrier) among the larger regional lines, and that employee morale on the new lines is quite good.

GENERAL OBSERVATIONS

While there is no precise way to categorize every short line or regional railroad that started up after Staggers, below are some observations based on our study of these carriers:

Most carriers started up by taking over abandoned track or track targeted for abandonment by a major carrier.

The track typically needed some rehabilitation work, and often the state, local government, FRA, or shippers shared in this expense.

Most short lines are non-union with 2 or 3 man crews, flexible work rules, and cross craft flexibility in making work assignments; even the more unionized regionals enjoy similar staffing and work rule flexibility.

Some very small lines are not large enough to have full time employees. These lines usually consist of only a few miles (10 or less) of track, and at most a handful of shippers. This type of railroad may even be operated by one or a consortium of shippers, with the railroad employees actually splitting time between the railroad and shippers.

Management and operating arrangements vary significantly among short line and regional railroads. Some lines are started by shippers that hire outside companies to come in and manage the railroad. Other lines are started by private investors, who may or may not have railroad operating experience.

tral Railroad, the Wisconsin and Calumet Railroad, Kyle Railways, Inc., Red River Valley and Western Railroad, the Chicago, Missouri, and Western Railroad Co., and the New York Susquehanna and Western Railroad. OTA conducted on-site interviews with the first five railroads in this list.

Nearly all short lines and regionals operate as low cost feeder and distribution systems in connection with larger railroads; a few, however, do operate primarily as bridge carriers.

In general, short lines and regionals represent businesses that larger railroads could not operate profitably; their operations, therefore, are usually complementary, not competitive.

Short line and regional railroads formed after 1980 emphasize rail freight transportation, not the rail car leasing business.

Finally, the factors that appear crucial to the success of all short line and regional railroad operations are a stable or growing traffic base, lower labor costs and greater labor productivity.

COMMISSION ACTIONS

The Commission has taken several steps to expedite the creation of short line and regional railroads. We recognized that fundamental changes in the rail industry had resulted from Class I carriers selling unprofitable or marginally profitable lines to smaller railroads. In line with the mandate of the rail transportation policy to reduce barriers to entry, we have removed numerous regulatory obstacles which could otherwise impede the smooth transfer of these operations.

In January 1986, we adopted the new, expedited procedures now codified at 49 C.F.R. 1150.31. These procedures exempt most short line and regional railroad acquisitions and operations from the prior approval requirements of 49 U.S.C. 10901. Under this class exemption, a new operator must file only a brief notice for publication in the Federal Register. The transaction can be consummated 7 days after the notice is filed. As of September 30, 1987, there were 89 new railroads created under this procedure since it became effective in February 1986.

The reason for creating a class exemption was our recognition that short line and regional railroads frequently need to complete a purchase rapidly to take advantage of favorable financing and to assure uninterrupted service. It was also clear that the need to issue individual decisions on each case made it difficult to process these cases quickly enough. We reviewed our records of exemptions and applications and found that virtually all such requests were unopposed and were routinely granted. We also found that much of the information required by our former procedures was not needed, since these proceedings usually involved continuation of unprofitable or marginally profitable lines, which, in all probability, would have been abandoned by the Class I carrier. Finally, we found that there was usually widespread local business and government support of these proposals.

We continue to believe that the policy underlying the exemption procedure established in Ex Parte No. 392 (Sub-No. 1) remains valid and on the whole has been extremely beneficial to the shipping public. Nevertheless, it is true that the larger transactions, however one might define them, may present issues which are at least somewhat less appropriately dealt with by the exemption process. More interests are potentially affected, and the efficacy and fairness of later revoking the exemption may become more questionable.

Recognizing this potentially different impact of large transactions, the Commission has recently requested comments in Ex Parte No. 392 (Sub-No. 1). We have done this with a view possibly to changing our procedures in a manner that preserves the benefits of a shortened approval time frame while maintaining procedural fairness in those instances where real problems arise. Our specific request for comments addresses whether the seven-day time frame should be extended and if so for what type or size transactions. If after consideration of the record on these issues filed in this proceeding we determine that modifications of our current policy in Ex Parte No. 392 (Sub-No. 1) are warranted, appropriate changes in our rules will be made. We believe that accomplishing such changes by rule is preferable to implementing them on an ad hoc basis.

Other regulations aimed at streamlining the regulatory process are:

(a) 49 CFR 1175, a class exemption for the issuance of securities. Under this regulation, short line and regional railroads need not file for ICC regulatory approval of securities issuances connected with the transaction.

(b) 49 CFR 1180.2(d) (1) and (2), a class exemption from the prior approval requirement of 49 U.S.C. 11343 for certain acquisitions by short line and regional railroads to expand their operations.

(c) Ex Parte No. 282 (Sub-No. 11), served July 7, 1986, effective on August 7, 1986, expanding the class exemption at 49 CFR 1180.2(d)(2) to include the continuance in control of a non-connecting carrier.

Finally, the Commission recognizes that Congress has expressed special concern about joint rate cancellations that affect smaller railroads. Recently, we adopted special procedures in Ex Parte No. 445 (Sub-No. 1) that require a 45-day notice period and, upon demand of any connecting carrier, an explanation and justification of a proposed joint rate or route cancellation, prior to filing a proposal. Ex Parte No. 445 (Sub-No. 1) also sets forth the criteria under which the Commission would investigate cancellations and prescribe joint rates, through routes, and reciprocal switching.

STATEMENT OF PAUL LAMBOLEY, VICE CHAIRMAN, ICC

MEMORANDUM TO CHAIRMAN GRADISON

I object to the draft testimony proposed for the Senate for the same reasons submitted in support of objection to House testimony.

Please show me with the following separate comments.

In testimony previously submitted, I have expressed concern about certain deficiencies in the survey results then reported on short line and regional railroads. The Commission has been updating this information. However, the present testimony perpetuates my concern because of apparent omissions.

First, the survey results fail to acknowledge and include significant factual information contained in the records of Ex Parte No. 392 (Sub-No. 1)¹ and its progeny of exemption cases. Nor does it, in fairness, include relative discussion of competitive access cases involving application of Ex Parte No. 445 (Sub-No. 1).²

Second, Previous testimony reported a continuing study of short and regional rail lines. This updated report, as did its predecessor, fails to include meaningful profile information concerning carrier finances, traffic and operations, asset sales and abandonments or the impact on employment and employee displacement. In addition, there is an absence of comparison of advantages and disadvantages for the respective parties in these transactions. Reporting requirements (similar to the discontinued R-2 filing) for such carriers would provide a better data base not only for this agency, but the industry itself, finance markets, shippers and Congress.

Third, this updated report fails, as did the prior survey, to demonstrate an effort to include comment from labor interests on the significant issues of employee displacement.

By way of general observations concerning short line and regional railroads, I submit the following comments.

In the past, I have joined in the Commission's efforts to encourage and facilitate development of short line and regional railroads under the auspices of the class exemption in Ex Parte No. 392 (Sub-No. 1). However, I have been concerned about the process and substance of this exemption. Now, certain procedural and substantive concerns initially noted in the development of our decision in that case have now become more problematic in subsequent applications.³ This class exemption has grown to be more contentious across an ever-widening scope of interests.

Since the adoption of the class exemption in Ex Parte No. 392 (Sub-No. 1) the records of cases claiming exempt status increasingly evidence significant departure from, and expansion in, the size and scope of transactions originally contemplated. Frequently, transactions now go well beyond the dimension of any case histories upon which the class exemption findings and conclusions were initially premised.

Indeed, under the holding in Ex Parte No. 392 (Sub-No. 1), exemptions were recently permitted in two major transaction cases: one involved the sale and transfer of some 1,900 miles of rail lines and facilities in 4 states, the consequence of paralled acquisition of Milwaukee Road property by the Soo Line⁴; and the other involved the sale and transfer of substantially of the rail assets combined with the termination of operations and employment of an entire railroad enterprise, leaving in its wake, the seller as an admitted insolvent corporate entity.⁵

¹ Ex Parte No. 392 (Sub-No. 1), *Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1986).

² Ex Parte No. 445 (Sub-No. 1), *Intramodal Rail Competition*, served October 31, 1985.

³ See separate expressions, Commissioners Lamboley and Simmons to Ex Parte No. 392 (Sub-No. 1) *supra*, Footnote 1.

⁴ Finance Docket No. 31102, *Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Co.*, served October 14, 1987.

⁵ Finance Docket No. 31121, *P&LE Railco, Inc.—Exemption Acquisition and Operation Lines of the Pittsburgh and Lake Erie Railroad Company and the Youngstown and Southern Railway*

Continued

These two cases found eligible for class exemption geometrically expand the reach of transactions which this agency exempts from review. No class exemption cases before bear any similarity to these transactions. The criteria and limiting language of Ex Parte No. 392 (Sub-No. 1) excluded such transactions from class exemption. Now, however, the recent majority decisions evidence there is no limit to transactions eligible for class exemption and thus no limit to those *excluded from review*.⁶

In class exemption cases, the 7-day effective date of notice and the limited information disclosure, coupled with the Commission's predilection to deny stay,⁷ has proven most difficult in relation to regional railroads. Further, as a transportation matter, the carrier/non-carrier distinction in exemption cases seems a fiction of form over substance in most cases.

If promise of continued rail service is to be a reality, financial viability and realistic business plans are critical. This is particularly true if one bears in mind that these lines are already only marginally profitable, and subject to both deferred maintenance and existing diversion of traffic.

Unfortunately, in the few cases in which factual information has been made available, it is evident that these purchase transactions are highly leveraged, creating substantial debt. Equally unfortunate in some cases, is that the impact of debt service requirements on needed revenues and rate structures have not been altogether realistic. Rather, many traffic and revenue projections have proven to be overly optimistic. Obviously then, continued or new rail service at reasonable rates becomes imperiled.

Additionally, there is some evidence of imminent failures. Partial abandonments or sale of operating assets for debt service represent unacceptable alternatives or solutions for continuing business operations. "Breakup" value for buyers are almost non-existent in these transactions.

There is also evidence that rehabilitation and maintenance costs are underestimated, notwithstanding financial assistance from shippers, as well as state and local government entities.⁸

Likewise, crucial to marketing plans for the newly formed carriers is access, whether by rate or by physical use of facilities. In two recent cases under Ex Parte No. 445 (Sub-No. 1) the Commission's application has been restrictive, and ultimately denied relief for physical access, requested by a shipper and carrier in one instance, and for suspension and investigation of cancellation of joint rates, requested by shippers and carriers in another.⁹

Several exemption cases reflect that sale transactions include "tie-in" agreements by which the selling carriers restrict, in a variety of ways, the acquiring carriers' flexibility for independent price/service options over traffic connections and markets.¹⁰

Company: Finance Docket No. 31122, Chicago West Pullman Corporation—Continuance in Control Exemption—P&LE Railco, Inc., and—Control Exemption—The Pittsburgh, Chartiers and Youghiogheny Railway Company; Finance Docket No. 31126, Railway Labor Executives Association v. Pittsburgh & Lake Erie Railroad Co., et al., Served September 29, 1987.

⁶ Comparison of various decisions in these cases as well as the reopening of Ex Parte No. 392 (Sub-No. 1) at this time evidence a lack of consistency. In neither case did the specific facts or equities require a finding of class exemption status, other than the applicants bare claims to such status. Dissolution of stay absent material change in circumstances, suggests little more than change of mind. Moreover, granting class exempt status with arguable loss of jurisdiction and conversion of activity lawful under one statute to unlawful under another *without Commission review* is inappropriate and unwarranted.

⁷ See Ex Parte No. 392 (Sub-No. 1), *Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, Decision and Notice served April 17, 1986 and Finance Docket No. 30891, *Paducah & Louisville Railway, Inc.—Acquisition and Operation Exemption—Illinois Central Gulf Railroad Company*, served May 11, 1987; *Kiamichi Railroad Company, Inc.—Exemption Acquisition and Operation—Certain Railroads of Burlington Northern Railroad Company*, (not printed) served July 22, 1987.

⁸ See e.g. AB-281X, *Texas North Western Railway Company—Abandonment and Discontinuance of Service Exemption—Hansford and Hutchinson Counties, TX, Texas County, OK, and Seward County, KS*, served August 19, 1987, and Finance Docket No. 30915, *Otter Tail Valley Railroad Company—Acquisition and Operation Exemption—Burlington Northern Railroad Company*, served August 28, 1987.

⁹ Docket No. 30921, *Midtec Paper Corporation v. Chicago and North Western Company*, — I.C.C.2d —, served December 15, 1986, and Suspension Case No. 71380, *Cancellation of Joint Rates/Routes on Synthetic Plastics, Conrail*.

¹⁰ Finance Docket No. 31089, *Montana Rail Link, Inc.—Exemption Acquisition and Operation—Certain Lines of Burlington Northern Railroad Company*, served July 31, 1987 and Finance Docket No. 30915, *Otter Tail Valley Railroad Company—Acquisition and Operation Exemption—Burlington Northern Railroad Company*, served August 28, 1987; also Docket No. AB-1 (Sub-No. 177), *Chicago and North Western Transportation Company—Abandonment and Discontinuance of Service—In Fond Du Lac County, WI.*, served July 29, 1987.

Finally, regarding employment and employee displacement issues, I continue to be disappointed by the Commission's approach in almost all cases which now routinely deny imposition of protection conditions on either buyer or seller in exemption transactions. The majority's failure to consider and fashion appropriate conditions in these cases closes this forum to the opportunity for constructive resolution of issues that have broad economic and social impact, not only in the near term of the specific transaction, but also in the long term for their cumulative effects.¹¹

In my view, and that of other's, the majority decisions too frequently fail to provide a fair analysis of the factual record, particularly as to the benefits and burdens of the respective parties in each instance, and to then provide a reasoned articulation of the factors weighed and balanced in reaching decisions.¹²

In sum, while the future prospects of short line and regional railroads should indeed be portrayed as bright and encouraging, the assessment should also be tempered by a degree of realism gleaned from actual case experiences.

STATEMENT OF J.J. SIMMONS, COMMISSIONER, ICC

MEMORANDUM TO CHAIRMAN GRADISON

I object to the draft testimony. If I am in the minority, please show me with the following separate comment.

While much of today's written testimony may be factually correct, in my opinion it does not meaningfully address the most significant recent development involving new short line and regional railroads. This is the increasing use of the Commission's Ex Parte No. 392 (Sub-No. 1) class exemption to avoid any regulatory review of even the most sweeping acquisition transactions. Absent some review, the Commission and the public lack necessary information on the future viability of new regional carriers. For this reason, I cannot join in the majority's enthusiastic support for current Commission policies in this area.

The Subcommittee is aware of the creation this year, in States including Montana, Wisconsin, and Oklahoma, of new regional rail carriers. These carriers will play an important role in what is, and must remain, a national rail transportation system. Yet in each of these transactions and in others, a majority of the Commission has refused to conduct any investigation into the conditions under which the new carriers will operate. In those very few instances where some information has reached the Commission, we have learned that new carriers may be subject to constraints on their ability to compete which were imposed in the sales agreement. These constraints can take the form of limitations on the new carrier's right to interline traffic with other carriers and the retention by selling carriers of the exclusive right to serve certain shippers on lines being acquired by the new carriers. Impediments such as these to effective competition by new regional carriers lend weight to the concerns expressed by many States and local governments, shipper interests, and employee groups over the Commission's policy of exempting significant acquisition transactions without any prior review.

The majority's testimony does mention our recent decision to seek comments on modification of the Ex Parte No. 392 (Sub-No. 1) class exemption. This action may result in some changes. However, any changes should extend beyond the narrow concern for "procedural fairness" cited in the testimony. They must reach to the heart of the current problem, i.e., an informational vacuum which precludes reliance by the Commission or the public on the future viability of new regional rail carriers which are assuring critical transportation responsibilities.

Senator ADAMS. We now will have a panel of witnesses: The Honorable Frank Morrison, Jr.; Honorable Bob Raney, Montana State Representative; Mr. William Fogarty; and I hope that I pronounce your name correctly, Mr. Milton Datsopoulos.

Mr. Morrison, Senator Exon wanted me to particularly greet you on behalf of himself and of the committee. I know that he is an old friend, and he regrets not being here. He will return as promptly as possible, and I will try to fill in in his place.

¹¹ See e.g. dissents in Appendix A attached.

¹² See e.g., judicial reversal and remand in *Railway Labor Executives Assn. v. I.C.C.*, 784 F2d 959 (9th Cir. 1986) and *Railway Labor Executives Assn. v. I.C.C.* — F2d — (9th Cir. Case No. 86-7384 decided August 19, 1987).

So we welcome you and the other members of the panel. I assume, Mr. Morrison, that since you are first on the list we will start with you. I would say that you may wish to summarize your statements, and the Chair will rule without objection that your statements will appear in full in the record as though given, and you may either summarize them or read them, at your pleasure.

Mr. Morrison.

STATEMENTS OF FRANK B. MORRISON, JR., HELENA, MT; BOB RANEY, MONTANA STATE REPRESENTATIVE; WILLIAM J. FOGARTY, ADMINISTRATOR, TRANSPORTATION DIVISION, MONTANA DEPARTMENT OF COMMERCE; AND MILTON DATSOPOULOS, COUNSEL, MONTANA RAIL LINK, INC.

Mr. MORRISON. Thank you, Mr. Adams. I would like to read the statement in total and then respond to questions from the Chair if I might.

I am Frank Morrison, as you had previously indicated, from Helena, MT. You called me Honorable Frank Morrison. I resigned from the Montana Supreme Court in March. I do not want to be referred to as the formerly Honorable Frank Morrison.

Senator ADAMS. No. We will say to you, Judge, that once a judge, always a judge.

Mr. MORRISON. Thank you, Mr. Chairman.

I am here to speak on behalf of no special interest group, Mr. Chairman, but rather to speak on behalf of an open government.

This statement was prepared by me en route to Washington, DC because I first wanted to visit with railroad workers in Livingston, Montana. That meeting occurred only about 36 hours ago.

This issue can be very simply stated, I believe. Can a national railroad on a major segment of its line terminate its obligation to provide service to shippers and be released from its labor contract commitments without any ICC review?

This issue affects all of my State of Montana. The issue, because of its precedential value, affects the whole national transportation policy. We are not dealing with the sale of a "short line."

This review does not involve a proposal to sell a financially troubled operation where service would otherwise be abandoned. In fact, Mr. Chairman, we are not investigating a sale at all. This transaction involves the lease of trackage rights on a major segment of Burlington Northern's Pacific Northwest operation.

The result is to terminate approximately 300 employees and substantially affect working conditions of 800 to 900 employees without one minute of collective bargaining.

The possibility is to allow a discontinuation of service for shippers along the southern route in Montana without ICC review.

How can refusal to review by the ICC be justified? Can any public interest be served by allowing this transaction to be consummated without knowing the details and questioning the extent of the economic impact?

In fact, the railroad officials have publicly declared that if a hearing is ordered and the details of this transaction made public, then the transaction will not take place. That, in and of itself, cries out for a public hearing.

I wish you could have been with Senator Exon and me in Montana 2 days ago. You would have gone to the community of Livingston and met, as Senator Exon indicated, with several hundred railroad employees and their families. They came from across our State. Some made the trip from Whitefish in northwest Montana; others from further south in Missoula. Some came from Glendive in the far northeast corner of our State, while others traveled from Hardin in the southeast. They came to Livingston because they could not afford the fare to come here and see you in our capital.

One by one, they stood before their brothers and sisters and before Senator Exon and me to tell of their desperate circumstance.

There was a young woman whose child had just been diagnosed as having brain cancer. She had been told Montana Rail Link's insurance would not cover pre-existing conditions, and she could only keep current coverage in force for \$500 per month.

There was a middle aged woman who said her husband could hold his job by bumping on the northern route, but she would lose her job in Livingston, one she had been giving to and relying on for 20 plus years. And where could she find a buyer for their house?

Burlington Northern had only a short time ago closed the shops, putting 350 people out of work in Livingston. And now more people were to lose their jobs, and in a town of 8,000 people the real estate market for houses has been devastated.

If you had been with Senator Exon and me, you would have seen railroad men come to that microphone, choke up, fight back their tears, and with a broken voice tell how their families would first be separated and then permanently divided.

Perhaps there are facts that might present some reasonable basis offsetting and partially justifying the human tragedy that is sure to follow. But if such facts exist, Mr. Chairman, then let them see the light of day.

I have been a Supreme Court justice in my State, and I know Montana's strong public policy, embedded in its constitution, assuring for its people the right to observe the deliberations of all public bodies. Likewise, the Federal courts, acting under precepts stated in the First Amendment to the U.S. Constitution, have vigilantly safeguarded our right to have an open Government.

But what of this case before you? Where have we honored our people's right to observe the ICC and the people's right to participate in their own Government?

It is little wonder, Mr. Chairman, that people have lost their confidence in their own political processes. It is little wonder that sometimes the people in my State sometimes feel their capital is too far away. It is little wonder they sometimes feel no one listens and government does not work.

Because of the strong backing our people have received from Senator Melcher, Senator Baucus, and Representative Williams, they now see some hope. And when Senator Exon came to Montana, they knew that there were some others in Washington, DC, who cared for their problems.

Mr. Chairman, what we are able to do here will speak for the effectiveness of democratic processes. If your committee can somehow pry open this closed proceeding, you will send a signal all the

way out to Montana. You can prove that government exists to serve everyone and not just a privileged few.

In this case, an exemption from review was granted without knowing the facts, without a single witness being called and being subjected to cross-examination. An exemption was granted without knowing whether this transaction truly qualified for exemption status under the law.

True enough, the application had self-serving assertions in it. But as Mr. Riley said here previously, he would not bank assertions.

My independent investigation convinces me that the failure to have a hearing in this case is a serious abuse of discretion on the part of the ICC. Unless reconsideration is granted so that the mandates of both law and strong public policy can be honored, I question whether the two nominations for reappointment to the ICC should be confirmed by the Senate.

In my opinion, this ICC inaction is a serious breach of the public trust. The very failure to perform legal duties calls into question the Commissioner's ability to serve further.

Now, Mr. Chairman, as a former judge I am sensitive to the separation of powers. Neither the ICC nor any agency should be threatened by the legislative arm of government. And in this case, the ICC should decide, free from interference or coercion, whether the sale is in fact in the public interest.

However, refusal to hear the case is quite another matter, and in my opinion this honorable body should consider such inaction as bearing on suitability for continued service.

We ask for nothing more, Mr. Chairman, than access to appropriate governmental regulatory bodies. We ask for that to which we are entitled under the law. And we ask for your help, any help you can give us, in securing these rights.

Thank you, Mr. Chairman.

Senator ADAMS. Thank you, Judge Morrison, for an excellent statement.

Mr. MORRISON. Mr. Chairman, I would ask permission to make part of the record a letter by James Goetz representing the rail employees in connection with their case now pending in Federal court for an injunction to stop the sale, now set for Monday next.

Mr. Goetz asked me to deliver this letter and ask your permission to make it part of the record.

Senator ADAMS. Without objection, it will be made a part of the record.

Mr. MORRISON. Thank you, Mr. Chairman.

Senator ADAMS. Mr. Raney.

Mr. RANEY. Mr. Chairman, I am Bob Raney, a member of the Montana House of Representatives and a conductor for the Burlington Northern Railroad and the former Northern Pacific Railroad for the past 24 years.

Much of what you are hearing today concerns the sale in Montana by the Burlington Northern to the Montana Rail Link. And your first reaction may well be that this is a State or regional problem and is not the concern of the U.S. Senate.

However, I believe you will find this sale is very much the concern of all the citizens of this nation who want an efficient, safe

rail transportation system in this country, and that a full ICC review is an absolute must.

The proposed sale is a center portion of the Nation's main line from the Pacific Northwest to Central and Southern United States. It is the direct rail route between Nebraska, Missouri, Kansas, South Dakota, Iowa, Colorado, Texas, and the entire South to the Pacific Rim ports in Washington and Oregon.

The only interchanges that this new railroad has is with Burlington Northern. It is in fact a captive shipper of Burlington Northern, as is all the rest of Montana.

Burlington Northern has convinced three of the five Interstate Commerce Commission members that this sale fits the review exemptions provided in ICC rules established under the Staggers Act. Those exemptions allow for marginal and low density, low profit lines to be saved from abandonment by permitting quick, unobstructed sales.

But the exact opposite is true in this case. The southern line through Montana is a highly profitable, high density main line that will never be abandoned if properly maintained and operated. And in fact, Burlington Northern has testified as such at Senator Melcher's hearing in Montana in August.

We are discussing the very lifeline of Montana's economy. The lack of a review means that there are many important unanswered questions. We do not know Montana Rail Link's financial capability to operate the line efficiently or to continue operations after a major derailment that destroys a bridge over the Yellowstone or Missouri Rivers, or to clean up a major hazardous waste release.

We do not know whether it will abandon intrastate and short haul traffic in favor of the long haul bridge traffic promised it by Burlington Northern, or whether it will force even more traffic onto Montana's deteriorating highway system.

Montana has the highest fuel, both gas and diesel, in the entire United States. We devote all that money to highway reconstruction, and we are falling behind rapidly.

We do not know if the new company's officers are qualified to safely operate and maintain a major high speed railroad along with local freight service. We do not know whether Montana Rail Link could remain a viable railroad if Burlington Northern found cheaper transportation costs through creating other short line railroads over the high line.

We do not know if this new railroad is going to be responsible for all the hazardous wastes that is currently on Burlington Northern's property, including leaking underground storage tanks and massive surface deposits of waste that is even on the Federal list.

We do not know for sure but what Montana Rail Link's real intention is to take over the line, bleed it dry, let it run down as far as it can, and then abandon it themselves.

We can find the answers to these questions and hundreds and thousands of other questions only if we are given the chance to appear before the ICC in the form of a full review.

This unreviewed sale is the first step in the franchising of this Nation's rail system. It is an attempt to segregate rail lines from associated profitable land grants. The potential is there for so

much subdividing of the Nation's rail transportation system as to put this Nation back 20 years.

We have strived for two decades to put together a rail system that offers fast, dependable, and safe service. Leaders from many States supported the original Burlington Northern merger of 1970 because it provided a single company main line from the breadbasket of this Nation to the Pacific Rim. It allowed great benefits for shippers.

Now we are seeing the beginning of the return to the former time and the potential for a nightmare in railroad shipping. The cost of interchanging alone could eventually prohibit railroads shipping across this nation.

We are seeing a flagrant abuse of the review exemption allowed under ICC rules and the proposal in Montana is only the tip of the iceberg. The length of main line track being sold compares to selling the track from Washington, DC, to Boston. Yet I am sure none of you would agree to such a sale as that without a full ICC review.

The sale, this sale and the one sure to follow, take debt-free rail lines and turn them into heavily mortgaged rail lines, and remove the last ties between land grants and the accompanying rail lines.

We in Montana are more than concerned; we are frightened. This sale will have tremendous effects on shippers, food producers, rail line communities, rail workers, and others, not only in Montana, but in every other part of the country that depends upon rail transportation. Montana rail workers in more than a dozen communities will lose their jobs, be driven out of their homes and forced to seek employment in one of the most depressed States in the Union.

Thousands of people are involved. Rail Link will tell you that 250 people potentially will lose their jobs. An additional 750 are losing their jobs on the Burlington Northern and will be forced to scatter out throughout Montana.

They will bump Montanans in 12 other communities. God only knows where these people are going to wind up, because they certainly do not know.

Our railroad retirement and unemployment system, whose solvency is already in doubt, will be taxed even further if these sales are allowed to proceed.

Our Montana attorney general, our Governor, the Department of Commerce, Public Service Commission, both our Senators, both our Congressmen, citizens groups, labor organizations, the Montana Farmers Union, the National Farm Organization of Montana, BN shippers, and thousands of citizens have gone to the ICC seeking a public review of this BN-MRL sale.

And nothing has happened, and in 6 days this sale becomes final. We must act quickly to save not only this line but the entire Nation's lines.

While you may be wary of tampering with the existing law because you have seen it benefit so many marginal operations, keep in mind that sales such as the one by the Burlington Northern have absolutely nothing to do with saving a line. An abuse of the ICC exemption is taking place and the ICC is not seeing fit to correct that abuse.

So Senator, it is up to you. You can join with all of us in Montana and demand the ICC fulfill its responsibilities and give us the review so obviously needed.

This sale and similar sales which are bound to follow are of such magnitude and importance to Montana and this Nation that they cannot be approved in the casual manner accorded it by the Interstate Commerce Commission on a single vote of three to two.

We dare not risk another Milwaukee Road or Conrail experience. We must show deep concern for the objectivity of the judgment of the members of the Commission.

Darius Gaskins, the president of Burlington Northern Railroad, is a former chairman of the ICC. Alan Fitzwater, who will represent BN quite often in hearings, also comes from the ICC. And Heather Gradison publicly speaks of what a wonderful railroad and how lucky Montana is to have Burlington Northern and to have Darius Gaskins.

It is obvious that the Burlington Northern has an opportunity that we the people do not have in getting and being heard by the ICC.

The push to close this sale, BN's to MRL, is such that even MRL does not know such things as rates and car availability, what happens during car shortages, what the employee duties and responsibilities are, how the employees can move from one community to another, really what the employee contract is.

In fact, their right to their employment application form we are taking to the Civil Liberties Union. Only a week ago, they came to Livingston to try to tell us all about what our options would be if we went with Montana Rail Link, and we all left the meeting with more questions than we went into it.

And in fact, one of their lawyers who is here present today came to me afterwards and said: "Gosh, would you write those questions down and send them to us? You are asking all kinds of things we have not even thought of yet."

The BN, the Burlington Northern, has been so callous to its employees that as of yesterday they had not even put anything on the bulletin board, they had not sent messages to us through our immediate supervisors. They have done nothing to even let us know the sale is in the making.

If we did not read the newspapers or listen to Montana Rail Link, we would not have any idea that our jobs are done in 6 days.

Now, the rumor is out, or at least it was in the newspaper yesterday, that they finally mailed notices to us that our jobs terminate on October 26. To work for Burlington Northern and to be subjected to these kind of abuses is an every day affair for us, but we nonetheless, are more fearful of what Montana Rail Link brings to us, which may well be the abandonment of the southern line in Montana.

These people are in it to make money, and if there is money to be made by doing it in they would be just as happy to do it in as to operate it.

Working for Burlington Northern is much the same as being on the plantation in 1830. They will divide our families up, they will send us all over Montana. They will put our towns in the position we cannot even sell our homes, so we leave our wives and our fami-

lies behind because we cannot afford to keep that home and move to another locality.

We are asking you to please do whatever you can to force the ICC to publicly review the sale between Montana Rail Link and Burlington Northern. We beyond a shadow of a doubt believe it is a sham.

Thank you, Mr. Chairman.

Senator ADAMS. Thank you, Mr. Raney.

Mr. Fogarty.

Mr. FOGARTY. Thank you, Mr. Chairman. I appreciate the opportunity to be here today.

My name is Bill Fogarty. I am the administrator of the Transportation Division of the Montana Department of Commerce.

Before I tell you why we have taken this position, I would like on behalf of our Governor, Ted Schwinden, to thank the Montana Congressional delegation for responding to his request to make the ICC aware of the magnitude of this proposed sale of the Burlington Northern to Montana Rail Link and urging them to thoroughly review it to ensure that the proposed sale enhances, not reduces, competition in the State.

The State of Montana does not necessarily oppose the proposed sale, which has the potential to be beneficial. As a Montana corporation, Montana Rail Link may well be more sensitive to the needs of Montana shippers and has already announced plans to work with some of the small shippers. Another rail carrier operating in the State could provide needed competition benefiting our many producers and shippers.

However, certain aspects of the sale-lease arrangement as reported in the press and in the filings with the Montana Public Service Commission do raise concerns. If you look at the map that is attached to my testimony,¹ you will see that there is a 50-mile stretch of track in the middle of the proposed lease sale that is in question.

BN is only granting trackage rights over this section of line. This stretch of line is significant because within its length is a connection to another rail carrier, one of the few which Montana has access to.

Limited information from BN and MRL suggest that Montana Rail Link may not be allowed to switch traffic to that other carrier at this point. Such arrangement will not allow for competitive access and would close existing gateways. If these conditions are included in the sale agreement, rail competition would be diminished, not enhanced.

The Interstate Commerce Commission as of May 1987 determined that the Burlington Northern was market dominant in Montana. We do not want to make the situation worse than it is right now.

Likewise, the Montana Public Service Commission's hearings and news reports have aroused concerns that competitive access and penalty-free gateways may not be available to the new rail carrier at either Sand Point or Spokane. Closed gateways and an absence

¹ The map was not reproducible.

of competitive access are of the utmost concern to the public and to the State officials.

The transportation division has the responsibility for rail planning and promotion of rail competition in Montana, but this task and other necessary policy decisions become extremely difficult when some of the most basic and fundamental facts regarding the State rail transportation system are not known. These facts must be known if the public interest is to be preserved.

The Commission's current rules do provide an opportunity to file a petition to revoke the acquisition and operation exemption that has been granted in this case. However, the petitioner in our view is placed in a catch-22 situation. The ICC will only, apparently, consider a petition if the petitioner can very specifically and without conjecture show why the public interest will not be served or how laws are being violated.

But if the petitioner is unable to obtain even the most basic and fundamental information necessary to make these arguments, it is extremely difficult to demonstrate to the Commission that review of the transaction is necessary. This is especially true in light of the fact that the Commission itself may not have full information describing the terms and conditions of the sale.

S. 816 and S. 1026 would help to remedy this unfortunate situation, while allowing both the States and the ICC to review necessary information about the proposed sale.

The proposed transfer of approximately 800 plus miles of track is not a typical short line. It constitutes nearly a third of Montana's rail system. It is a vital link in the transcontinental line, and the line is not a likely candidate for abandonment, at least at this present time.

By BN's own admission, Mr. Chairman, this line is at least equal to or in better condition than any other line in the State. And by a transportation survey that the Department did in early 1986, there is certainly sufficient traffic on that line to indicate that the cash flow is very positive.

I respectfully request that you give full consideration to legislation which would require a thorough review of a short line sale when required by the public interest.

Thank you.

Senator ADAMS. Thank you, Mr. Fogarty.

I wanted to ask you, because I did not pick up your map that quickly, what was your alternative gateway with the 50 mile link that you were referring to and what main line does it connect to?

Mr. FOGARTY. Mr. Chairman, on the southern route there is this outline at the bottom of the map, you will notice.

Senator ADAMS. The one to Darby? Tell me where your gateway is?

Mr. FOGARTY. It is the one that runs from Helena to Drummand, or approximately to Drummand. It is approximately in the western third of that map, and it is the cross-hatched line on the bottom line.

Senator ADAMS. Thank you.

Mr. Datsopoulos.

Mr. DATSOPOULOS. Thank you, Mr. Chairman.

My name is Milton Datsopoulos. I reside in Missoula, MT. I am an attorney. I have been involved in representing Denny Washington and being a close friend of his for over 25 years. I have been involved in his corporate operations. I know him as a person.

I would like to ask the committee today to take formal notice that Mr. Washington has submitted written testimony. I would appreciate it if that would be made part of the record.

Senator ADAMS. Do you have it there with you?

Mr. DATSOPOULOS. I do.

Senator ADAMS. All right. Without objection, it will be made part of the record at this point.

Mr. DATSOPOULOS. I also would like to advise this committee and yourself that Mr. Washington intended to be here until just this week and was unable to do so because of a meeting involving some international businessmen that had arrived that he just could not get out of.

As a matter of background, I would like to emphasize that Montana Rail Link, Inc., is a Montana corporation. It was formed and filed in Montana even though specialists in corporate and tax law advised that it would be more beneficial financially and from a corporate flexibility standpoint to file it elsewhere, such as Nevada and/or Delaware.

The reason for that is Dennis Washington lives in Montana, has lived there almost all of his entire life. He has located his family there, and the headquarters of all his multi-faceted businesses are in Montana.

He has had major projects throughout the entire Western United States through various corporations which he principally or totally owns. He at this time has achieved substantial financial success. He has achieved widespread respect as a businessman, and he is at an age and a financial status where his sole focus in life is not money.

He has the ability to make substantial investments, and he has been invited to make investments elsewhere, and quite frankly many of those investments in other states and in other areas would probably give him the benefit of greater returns on a shorter period of time.

He is financially and emotionally committed to the State of Montana. He is committed and has strong feelings that the State of Montana, through the process of national and international economics and politics, and through sometimes its own shortcomings, has not fully provided the economic opportunity to itself and, most importantly, to its residents that it is capable of doing so.

It is alarming to him, to myself and others that in Montana most of the important human capital in the form of quality talented young people have to leave to be able to live.

He was approached because Burlington Northern believes that the southern route is in some sense redundant and will become moroso in their overall business plan. And he was told that the Burlington Northern was looking for a divestiture and an entity to acquire the southern route.

This approach was not by the Burlington Northern. It was by an investment banking house in New York, and Washington was one of several that they had in mind. Government was leery at first,

and he realized it would be a significant undertaking with much financial commitment on his part and, more importantly, a great deal of his time, energy, and emotion.

He hired the best consultants that could be found, both from an operational standpoint, from a financial standpoint, and from a legal standpoint. After initial individual investigation and after consultation with those consultants, he determined two things:

One, that this was a very large opportunity to make an investment in Montana and its future. It is an area that he felt that his particular organization, that his financial capabilities and his strong interest in Montana made available to him and would give him an opportunity not only to make a good long term investment, but also an opportunity to make an investment that would be significantly important and would improve Montana's environment for the future.

This discussion, this investigation, the expenditure of millions of dollars and thousands and thousands of hours of key personnel time, commenced over a year ago. This inquiry and the discussion of the sale of this route was publicly disclosed by the media approximately last Christmas.

Since that time, Dennis Washington himself has focused almost all of his time on this transaction. He has listened to the best consultants that he could find. He has committed the bulk of his executives to this transaction, in making a determination as to whether to acquire and then under what conditions to acquire.

He has fought hard and long in negotiations with Burlington Northern, and he has reached a formal agreement to acquire.

I think it is important to note that in all areas of life, especially in this country, we all believe in fundamental fairness and we all believe in the fact that the rules are established before you enter the game. In this case, the rules have been established by appropriate and proper ICC rules and regulations.

Those regulations in terms of the filings, in terms of the filing of information, the disclosure of information, have not only been completely and totally met, but they have been exceeded by the fact that Montana Rail Link and Denny Washington's commitment is, any questions that are asked that are anywhere near being relevant and do not require me to expose my own private information and my personal and family information will be answered.

We have met with the Public Service Commission on numerous occasions. We have met with legislative committees. We have met with the attorney general of the State of Montana. We have met with the Governor's office. We have met with the Department of Commerce.

We have given them all the information that we have. We have even told them that we will disclose Denny Washington's private financial information if they will give us a commitment of personal confidentiality.

We have made available to the Public Service Commission through Tim Baker, their counsel that is assigned to this particular transaction, the ability to speak with the lead banker and managing director of Schroeder & Wirtheim—Wirtheim & Schroeder of New York City, who is acting as consultant and investment banker for us, the ability to talk with Mr. Mort Lowenthal and ask him

personal, private questions regarding financial transactions, especially as it relates to this. And Mr. Lowenthal has been directed and authorized to release that information.

We have made the proper applications. We have filed the required necessary information and have exceeded those requirements. We have obtained an exemption, which is now presently available. It has been utilized for a period of time.

It is one that we counted on because it was part of the rules and regulations of the Interstate Commerce Commission and appropriate regulations under the laws passed by this Congress.

This man and his organization have spent literally millions of dollars of private funds, have donated and committed their lives for over a year and their organizations to making this transaction come true.

And at this point you are being asked to intervene with the appropriate agency having jurisdiction and create delay. I would like to emphasize that a delay in this transaction substantially creates the risk that it will never happen. That does not come from the perspective of the Burlington Northern. That comes from the perspective of Montana Rail Link.

We have spent millions of dollars. Those were all personal funds. We have taken the top talent in the Washington group of corporations and have taken the top two people virtually full time and committed them to this transaction.

We have hired many people, including people that have left their jobs in other areas of the country who are railroad specialists and top people in their professions, and they have moved to Montana and have come here with the direction and with the expectation that they will own and operate a railroad.

If that expectation—if the history and the regulations are set aside in this case, it will shatter those commitments. It will destroy the emotional and financial momentum of this transaction. I think it will create great peril for the transaction and the acquisition of the southern route.

I would also like to point out that probably the most concern that we all have had—there is really no legitimate concern that Montana Rail Link can afford and is properly financed to own, capably maintain and operate this railroad. There is no concern that the management team that has been acquired and is in place to run this railroad, has the experience, education, and training to properly and effectively and even more efficiently run the railroad than now is the case.

There is no concern that this is an arm's length, independent transaction, strongly and hotly negotiated. And there is no concern that Montana Rail Link is a corporation that is intending to acquire a major asset for the purpose of a long term operating vehicle.

There is concern that there will be some displacement and disruption in some employees' lives. That is a legitimate concern. It is an honest concern. It is a concern I have. It is a concern that Bill Brotsky, the president of Montana Rail Link, has. And it is a concern that Denny Washington has.

We not only have that concern because of the human element that is so important to all of us, but we also have that concern be-

cause we cannot and will not be successful if we do not have an experienced, talented, satisfied pool of employees.

We intend to create an employer that is much more sensitive to the human needs, to the family needs, and to the individuality of those employees. Because of the concern we have, we did go out and we did negotiate an agreement with the Brotherhood of Locomotive Engineers, a major international railroad union.

That agreement is in place, and their vice president publicly has called it the best labor agreement ever in the history of short line and regional railroads. We are in the process of negotiating a labor agreement with unions for the non-operating personnel of this railroad.

We are committed, and we have stated as a matter of record, to hire from the existing pool because we believe that is the proper and human thing to do, and we also believe that it is in our best interests to do that, and we intend to hire these people, not because they have to go to work for us, because many of them are protected under previous agreements through the merger, but because we actually want them.

We believe they are talented people. We believe that people that live in Montana have a particular and unique work ethic, and we believe that we can attract them by the wage structure, by the work rules, and by the participatory process of profit sharing; and we will listen to their views and we will tailor work rules to their needs.

I caution you about delaying this project and the acquisition by Montana Rail Link, because I believe it is in the best interests of the State of Montana, it is in the best interests of the shippers, and that is documented by the fact that in excess of 50 shippers have strongly supported this proposed acquisition and I think maybe two or three have opposed it.

These are people who have done business in the State of Montana for many years and have utilized Burlington Northern, and their fear is that this transaction will not get done, not that it will get done.

We have submitted written confirmation and documentation of that support. We have been told by shippers who are asking us, when are you going to take over? We need somebody that we can talk to, that understands our needs, that can help us expand our businesses, that can tailor and modify shipping rates so that we can remain competitive and expand our businesses.

That is what we intend to do. Quite frankly, if we did not believe that we could create more shipping in the Montana area, we would have no real long term business motivation to get involved in this.

I am not here to condemn the Burlington Northern or to applaud the Burlington Northern. I am here to explain to you that Montana Rail Link is a Montana company, well financed, staffed with top-notch people, legally capable of acquiring this piece of line, and that it is owned by a Montana man committed to the State, with substantial business talent, that will benefit the State of Montana if he does own this railroad.

One other reason other than financial reasons that it is critical that this acquisition not be delayed is the fact that in Montana, like Nebraska and other States with severe winters, we from an

operational standpoint must take over before the severe weather hits, because it will substantially increase the costs and complicate the transition period if we are forced to wait until the middle of the winter.

I at this time believe that it is legally appropriate, that it is factually proper, and that it is in the best interests of Montanans both from the standpoint of shippers, residents, and the employees that this transaction be approved.

Thank you.

[The statement follows:]

STATEMENT OF DENNIS R. WASHINGTON

Mr. Chairman and members of the Subcommittee, my name is Dennis R. Washington. I am chairman and principal stockholder of Washington Corporations, as well as chairman and principal stockholder of the Montana Rail Link, Inc. I am accompanied by the Montana Rail Link's legal representatives, Milton Datsopoulos and Peter Gilbertson. I would like to thank you for the invitation to appear before the Subcommittee and express my enthusiasm for and commitment to the Montana Rail Link, and to present my thoughts on the need and importance of regional railroads, especially in Montana.

At the outset, I want to emphasize that I am not a veteran railroad operator. My experience with local and regional railroads, while direct, is brief and as yet incomplete. As you may know, Senator Exon, through Washington Corporations' work on the Calamus Dam project in Nebraska and through other major dam, mining, and large highway projects in the Western United States, my business background is principally in heavy construction.

I grew up in Missoula where my father was a construction worker, and at age 15 I also entered the building trades. I became vice president of a local construction company at 24, and started my own construction company at 29 with a small loan and one rented tractor. Today that construction company is Washington Corporations, one of the largest construction and heavy equipment companies in the Western United States. Washington Corporations also holds a number of other mining, smelting, and development companies. The Montana Rail Link will be every bit as successful as Washington Corporations.

As you know, we are in the process of acquiring a portion of Burlington Northern's southern Montana line, approximately 544 miles of the main line from Huntley, Montana to Sandpoint, Idaho and approximately 286 miles of eight branch lines, to form the Montana Rail Link. Montana Rail Link also will have trackage rights from Sandpoint to Spokane, Washington.

At the time when I was approached about acquiring this portion of BN's southern Montana line, my knowledge about the line and of railroading was very limited. I certainly was aware that the line filled a very important role in meeting Montana's transportation needs and that BN had long been a presence in the State. However, I was uncertain about the merits of a small railroad and like others, I too was skeptical as to why BN would look to sell what I understood to be a healthy line. I commissioned a comprehensive study and, upon reviewing its results, requested answers to some additional questions I had. The study indicated that, although the southern line included a number of very weak and neglected branch lines, the main line, at least, was in first class condition. The study also indicated that with a modern cost structure the entire line, including the weak branch lines, could be managed and operated profitably, and that it could be marketed to reach scores of shippers and businesses that did not use rail service.

At the same time, I learned that some out-of-state interests had approached BN to acquire the line. Upon consideration, I concluded that the purchase and start up of a new carrier could be made to work. I also became convinced that what Montana did not need was another distant absentee owner of this vital rail link.

Members of the Subcommittee, I tell you this because I believe in the State of Montana and I believe in taking an educated risk on a business venture that can become a profitable operation. My beliefs are illustrated by the success of Washington Corporations' subsidiary, Montana Resources, Inc., the owner of the assets of the former Anaconda Minerals Company in Butte. The closing of the Butte copper mine in 1983 after 99 years of operation hit Montana and its people hard. Washington Corporations bought the mine after it had shut down and with a lot of hard work by the employees and the help of state and federal officials, the mine today is showing

a profit, and pumping about \$30 million annually back into the Montana economy. As a result, new offices and retail stores have opened in Butte, and hundreds of jobs are being created.

I intend to duplicate this success with the Montana Rail Link. The Montana Rail Link will be a first class railroad, providing improved, competitive service for the shippers and businesses in Montana, Idaho and Washington and a positive employee environment. I also envision the Montana Rail Link as being a positive resource for the State of Montana. With Montana recently ranked 48th in the United States economically, Montana must work to attract business and industry. I believe that BN's sale of its southern Montana line to the Montana Rail Link substantially will improve the State's business climate.

The Montana Rail Link initially will employ approximately 700 to 750 employees and serve hundreds of shippers. The management I have recruited for Montana Rail Link has extensive railroad experience. We anticipate that in 1988 approximately 75,000 carloads will originate or terminate on MRL's line, and that more than 90,000 carloads will bridge over the lines. The Montana Rail Link will be a union railroad. As discussed below, our operating employees are covered by a labor agreement with the Brotherhood of Locomotive Engineers (the "BLE"). We intend to complete a similar labor agreement to cover our non-operating employees. We are in the process of negotiating an agreement with the Railway Labor Executives Association.

As a new carrier, the Montana Rail Link will establish its headquarters at Missoula, in the geographic center of its operations. This will bring together in Montana the rail line's marketing, operations, and management functions that previously had been segmented across the country in St. Paul, Minnesota, Overland Park, Kansas and Fort Worth, Texas.

The Montana Rail Link, like other regional railroads will be a locally based employer, a purchase of services and supplies from the local communities and, most importantly, will learn directly and first hand of the needs of its local customers. This closer relationship with shippers and on-line communities, together with cost efficiencies the Montana Rail Link will be able to attain, creates the opportunity for our railroad to solicit new traffic within the local or regional marketing area that previously was ignored by the seller. The Montana Rail Link also can offer services to its shippers that previously were not economic for the seller to offer. In doing so, the Montana Rail Link offers the best hope for preserving and promoting branch line and main line rail service throughout its service area.

One point that I would like to stress is that the Montana Rail Link, like other short line and regional railroads, must form a partnership with its long-haul carrier. This element is essential in preserving and enhancing rail service. Although the Montana Rail Link and other railroads like it are local companies, they are not isolated depots. They also are serving many national shippers as part of a national transportation system.

Therefore, the regional railroad with its local markets must meld its interests together with those of the long-haul carrier and its national markets. In our case, MRL will have joint line rates with BN on originating or terminating traffic and anticipates joint rates with other carriers with which it will interchange. BN will publish and maintain the tariffs for its joint rates. The Montana Rail Link, however, will establish its own local rates. There will be no division with BN on these local rates.

Another area in which the long-haul carrier and the regional carrier must work as partners is in equipment supply. The selling carrier already has the equipment necessary to serve the shippers on the line being sold. The Montana Rail Link will purchase from BN approximately 45 locomotives, certain rolling stock, vehicles and other equipment. However, BN will continue to provide freight cars for traffic interchanged between the two carriers, in order to assure continued adequacy of car supply.

The phenomenon of short line and regional railroad formation, at least from what I have seen on the Montana Rail Link, is not a union versus non-union issue. Rather, from a business standpoint, the objective actually is the creation of a structure which permits an employee to be able to give a day's work for a day's pay. I am happy to say that we have met this objective most satisfactorily in our agreement with the BLE covering our operating employees, and we have every confidence that that objective will be met in the labor agreement that is being negotiated for the Montana Rail Link's non-operating employees.

Our contract with BLE is unique. Not only does it provide for an overdue restructuring of craft lines, bases of pay and certain work rules, it also breaks new ground with novel provisions that benefit employees. These include a 401(k) plan, medical, dental, life insurance and long-term disability plans, a profit sharing plan, and

major new quality of life benefits. For the first time a railroad labor contract permits operating employees to make their own schedules rather than being on call seven days a week. The contract with the BLE is the best and most farsighted agreement for any regional railroad employees, better than current agreements with other regional rail carriers that have received favorable reviews, such as the Chicago, Central and Pacific Railroad and the MidSouth Railroad.

You have asked for my comments on the proposed bills that would require labor protection on transactions such as the Montana Rail Link. As I understand, it has been proposed that employees who lose their jobs would continue to receive their full salary and benefits for six years. For the Montana Rail transaction, the cost of such labor protection, according to BN's estimates, would be approximately \$300 million. This would clearly kill the deal, and destroy for all—the communities, the shippers, the State, and the employees—the benefits that I have described. While I am not well versed in the history of "labor protection," I find such labor protection to be extraordinary and, to my knowledge, unprecedented anywhere else in American industry or commerce.

You also have asked me to comment on the ICC process. Again, my experience with the ICC is limited to this transaction, but I was very pleased to learn that the Commission would act expeditiously on our exemption request, enabling us to close the transaction in a timely manner. I believe we have disclosed to the Commission all the relevant information it needs to evaluate the transaction. Moreover, I know that the Montana Rail bears the risk that the ICC can continue to examine our transaction after the deal closes. Therefore, in my opinion, legislation requiring protracted proceedings in unneeded and would not be helpful. I believe enactment of such legislation would impede the transaction from going forward.

More than 50 shippers, businesses, and communities along the Montana Rail Link share my views and have sent letters to the ICC expressing their support for the transaction. A list of the shippers who have filed letters with the ICC in support of the transaction is attached.

To my knowledge, the principal source of opposition to the transaction has been rail labor. I understand, however, that rail labor has, thus far, opposed every line sale transaction. Judging from the support we received from employees at a series of recent meetings held in communities along the line, I expect much of the opposition to diminish quickly and turn to support.

The decision to purchase the BN's Southern Montana line and begin operation of the Montana Rail Link is not a venture I have entered into haphazardly or half-heartedly. I firmly believe that Montana Rail Link will succeed, prosper, and grow; benefitting the State, the communities, and the businesses it serves and its employees. I am committed to this goal. I know that in years to come Montanans can point to the Montana Rail Link with a sense of pride in that it is an important link in our nation's transportation system and that it is their own.

SHIPPERS AND BUSINESSES IN SUPPORT OF THE MONTANA RAIL LINK

SHIPPERS WHO HAVE
FILED WITH THE ICC

Forest City Trading Group, Inc.
North Pacific Lumber Company
Eagle Brokerage, Inc.
Continental Lime Company
Cyprus Industrial Minerals
Felco Industries, Ltd.
Felton Construction Company
Rocky Mountain Log Homes
Earl's Distributing, Inc.
Champion International Corporation
Cascade West Transportation Brokers, Inc.
Tricon Forest Industries, Inc.
Stoltze-Conner Lumber Company
D. A. Davidson & Co.
Co-Operative Fertilizers
General Mills, Inc.
Ideal Basic Industries
Con Agra, Inc.
Darby Lumber, Inc.
Missoula White Pine Sash
U.S. Plywood
Zip Beverage, Inc.
Independent Lumber & Supply, Inc.
Pegasus Gold
Westmont Mining, Inc.

SHIPPERS AND SUPPLIERS WHO HAVE
EXPRESSED AN INTENT TO
FILE WITH THE ICC

Dyce Chemical
Flathead Lumber
Plum Creek
Thompson Lumber
Fox Wholesale Lumber
Daw-WI Forest Products
Georgia Pacific
Brand-S
Billings Recycling
American Chemet
Cominco American
Transbas, Inc.
Wyo-Ben
Louis Dreyfus Co.
Montana Recycling
Thatcher Chemical Company
Geo Resources
Fruehauf Corporation
Bitterroot Motors
American Asphalt, Inc.
First Interstate Bank Billings

GENERAL SUPPORTERS WHO HAVE FILED WITH THE ICC

Broadway Splicing & Supply, Inc.
First Interstate Bank Missoula
Hanson's Finest Oil Company
Holland Loader & Holland Const. Co.
JGL Distributing, Inc.
Missoula Chamber of Commerce
Montana Bolt, Inc.
Montana International Trade Commission
Randolph V. Peterson, Inc.
Tabish Brothers Distributors, Inc.
West Electric Distributors, Inc.
Wyckman's
All West Tractor, Inc.
Novco
Montana Mining Association

John R. Daily, Inc.
Flanagan's Car Dealership
Hi-Noon Petroleum Company
Interstate Diesel Products, Inc.
Lambros Realty
Missoula Forest Products, Inc.
Montana Coal Council
Nelcon
SIRCO
Vann's
Wood Products Association
A-L Compressed Gases, Inc.
DeMarois Oldsmobile, GMC
Grizzley Auto Center
Crown Parts and Machine

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Senator EXON [presiding]. Thank you very much. We appreciate your testimony.

I will now recognize Senator Adams.

Senator ADAMS. Thank you, Mr. Chairman.

Mr. Datsopoulos, do you have shipper agreements right out of the Powder River Basin there at Gillette? Or are those controlled by the Burlington Northern?

Mr. DATSOPOULOS. Those coal hauls go to the Burlington Northern, and almost all of them go through the northern route.

Senator ADAMS. Well, they connect to the southern route, is that not correct?

Mr. DATSOPOULOS. Yes.

Senator ADAMS. They own the coal, too, do they not?

Mr. DATSOPOULOS. My understanding is that the Burlington Northern does own coal reserves, yes.

Senator ADAMS. So you do not have the coal traffic?

Mr. GILBERTSON. Senator Adams, my name is Peter Gilbertson. If I could answer that question, any coal traffic routed that way would—could be routed over that of the Burlington Northern before the transaction and after the transaction.

It is our understanding that at this point there is not—that most of that coal moves south out of Wyoming to other points east. But if coal were routed west, it could go over Montana Rail Link. There is no prohibition against that, and we would actively solicit that.

Senator ADAMS. Do you have the right to link up with the Union Pacific over the Montana Western?

Mr. GILBERTSON. No, we do not, and we are concerned about that. We are not happy about that, and that was hotly negotiated, as Mr. Datsopoulos said. However, currently right now, because of its rate practices, which are presumably in place right now, Burlington Northern does not interchange any volume of traffic over that gateway today.

So it is our view that the transaction will certainly not impair anything that exists today as far as the status quo.

Senator ADAMS. Well, let me address what my concern is, that I happen to have some familiarity with those rail routes from about 20 years of experience with them, and you have in effect a rail route that is connected on both ends to the Burlington Northern and has no access to any other competitive carrier.

So I do not see how you are anything other than a captive of the Burlington Northern. And I do not say that as hostile to the Burlington Northern or as applauding it, but I see it as a significant problem that is traditionally reviewed by the ICC.

This is not a traditional short line operation that goes out and is subject to potential abandonment that is being sold. It is one-half of the main line, but it connects at both ends to the main line of the Burlington Northern, with no outside connection that I can see on the map before me.

Mr. DATSOPOULOS. Maybe I can answer that generally, and Peter can add some specifics, Senator. The fact is your description is accurate. We were concerned about that in our negotiations, and in the beginning when we went to evaluate whether we were going to become serious negotiators for this acquisition.

We have, we believe, a built-in contractual safeguard because we have a guarantee of so much bridge traffic over that southern route from the Burlington Northern in order to preserve the revenue stream and the viability of that railroad, because the question you are asking focuses on a concern that is very serious to anyone that is familiar with the railroad business.

And we do not want to be in a position where we have to every year go to the Burlington Northern and say, OK, will you give us enough traffic to survive? We have negotiated and contracted for that and we feel that the contract is very strong in preserving a stream of traffic and revenue stream to make that a very viable economic, independent stand-alone railroad.

Mr. MORRISON. Senator Adams, could I comment on that?

Senator ADAMS. I was just going to ask him if he ever knew anything about the D&H.

Mr. GILBERTSON. Senator, I think the distinction here is that we do have these contractual protections, and this is a situation in

which the routing alternatives do not exist today. There is no way you can create a routing alternative at Huntley because there is only one connection there.

So our view of the competitive alternatives—and I think this was noted by the Department of Commerce—is that the shippers will not lose any competitive routes that they have today. And our business plan is to increase the efficiency of the railroad and to increase the marketing of the railroad and open up new markets to the shippers that are on the line but are not using the line, to increase traffic.

Senator ADAMS. Who has control over the routing at the bridge connection points at each end?

Mr. GILBERTSON. Burlington Northern does. However, again by contract we have got restrictions in the agreement that prohibit them from shutting traffic off.

Senator ADAMS. Well, there are two ways you can close a gateway. You can close a gateway by cutting off the traffic or you can close a gateway by raising the price, and either way is quite effective. That is why I asked you if you had ever had any experience or know of the D&H, the Delaware & Hudson, which we kept alive for years.

Now, those are my basic questions. I am concerned about the transaction, but I will yield what time I have left because Judge Morrison had a comment that he wanted to make, and please be my guest.

Mr. MORRISON. It is on the same thing, Senator Adams. With respect to this, with respect to whether through competition any better rates can be made available to the shippers, as was implied in Mr. Datsopoulos' testimony, I think that would be dependent upon being able to have control of this 50-miles of track that is being withheld from the transaction in order to interline with the Union Pacific Railroad, which has a line that does come up and interface in this 50-mile stretch, and it would take traffic off the Burlington Railroad, down to Pocatello, ID, on the Union Pacific, and then on to the West Coast.

And Dennis Washington's Montana Rail Link Railroad could not become a competitor of the Burlington Northern Railroad unless they controlled that 50 miles of traffic so he could not interline with the Union Pacific Railroad at that point of interface in that 50 mile stretch.

But to show you how poorly this whole thing has been thought out, the Burlington Northern has made the whole transaction conditioned upon their being able to have that 50 miles. I say the State of Montana could simply take the 50 miles by eminent domain and lease it to Dennis Washington, and the Burlington Northern would have lost that which is a condition of theirs in going ahead with this transaction.

That is why we need a hearing on it. There has been very little creative thought gone into this. But I can assure the Burlington Northern Railroad, I am a candidate for Governor of Montana and if I am elected Governor I am going to the legislature seeking appropriation if this deal goes through to take this 50 miles by eminent domain and lease it to Dennis Washington, so in the State of

Montana we will have an opportunity to compete rate-wise with the Burlington Northern for our shippers.

Mr. RANEY. And I will carry the bill.

Senator ADAMS. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Adams.

I have several questions, and I think that everyone in the panel probably has been listening with some degree of interest to the previous questions that have been asked. And I would simply say that as chairman I would like to give you an opportunity to, within reason, to respond and give us any insight on any subject that we have been discussing here previously today.

I guess one thing that may be missing to some extent is, what is the opinion of the shippers that are affected by this transaction? And I would particularly like to ask Mr. Fogarty, the representative of the State, can you enlighten us as to whether—have there been surveys by any Department of State government, official surveys that would shed some light on the attitude of the shippers in general on this line as to the proposed sale?

Mr. FOGARTY. Mr. Chairman, in response to your question, there has been no official survey of the shippers as to whether they are pleased or displeased with this particular transaction.

We have gotten correspondence from, I would say, 8 or 10 small shippers that express concern, and they did file a petition to revoke, I understand, with Mr. Goetz' petition. We also are aware of at least two other petitions to revoke by major shippers.

For the most part, I think most of the shippers, the larger shippers, have been quiet, and I assume they have been talked to by either Montana Rail Link or the Burlington Northern.

I think Senator Adams, Mr. Chairman, identified one of the State's main concerns on the gateways remaining closed. As you are well aware, the State of Montana and Montana's grain producers have spent 7 long years before the Interstate Commerce Commission on a rate case and have spent over a million dollars in that effort.

It was just in May 1987 that they finally ruled that the BN was market dominant in Montana. Again, from our standpoint we would like to see those gateways opened up and give Montana's shippers and producers the opportunity to choose the routes that are most desirous and efficient for them.

And we do not see this being able to happen under the Montana Rail Link-BN sale proposal. Our other concern is that we understand that Burlington Northern's is going to remain in control of the rates, and of course by doing this Montana Rail Link will not have the option to set the rates on the line as long as there is traffic being interchanged with the BN.

Those are our main concerns. We are certainly not opposed to short line sales. We could support it, I think, wholeheartedly if it was a free and clear sale.

But with the conditions that are imposed on it, it appears to us that it is primarily a paper transaction.

Senator EXON. Has the Governor of the State taken any position on this one way or the other?

Mr. FOGARTY. Mr. Chairman, he has. The Department of Commerce, with the concurrence of the Governor, originally filed a pe-

tition to stay, which was denied by the Interstate Commerce Commission.

The Governor then wrote a letter to the Montana Congressional delegation, urging them to do whatever they possibly could to get the ICC to perform a thorough review of this sale.

Senator EXON. Is it fair to take from that that the Governor's position is that further review of this should be done by the ICC before the sale is finally consummated on October 26 as now scheduled?

Mr. FOGARTY. Yes, Mr. Chairman. In his letter to the congressional delegation, he urged an expeditious decision by the ICC before the sale was consummated.

Senator EXON. Let me ask you this question. I listened with interest to your statement about competition and what you would do if you were Governor with regard to transferring that 50-mile track to the Montana Rail Link so that they could be two competitors. That implies to me that you feel that without that, the Burlington Northern would have a hammer that would not make them a fully competitive railroad with the Burlington Northern northern route.

Is that right?

Mr. MORRISON. Yes, Mr. Chairman. As I have reviewed this transaction, I think that Montana Rail Link is nothing more than a franchisee in operating the leased track of the Burlington Northern's.

Senator EXON. I would like to have Mr. Datsopoulos comment on that.

While I am giving you a chance to comment on that, Mr. Datsopoulos, I want to say that I have met with Dennis Washington. I am impressed with him. I am impressed with his background. I am impressed with what he told me at least were his motivations behind this, and I think it is pretty evident that he is a pretty solid Montana citizen, and you know, having said all that, I just want to state once again that it is my view that this sale may end up being for the overall good of Montana in the long run, especially if we could clear up this matter with regard to the 50 miles that I have some concerns about with regard to whether the line could be truly competitive.

Would you not, as the attorney representing the purchaser of the line and intimately involved in this, feel that you would have a much stronger, viable railroad if you did not have that obvious question mark of the 50 miles?

Mr. DATSOPOULOS. I believe the statement you have made is absolutely accurate, and it would be a very advantageous factor if we could acquire the railroad without having the 50-mile gap in the line that we are now proposing to acquire.

We have negotiated that point and have fought over it and have screamed over it, but we cannot get the Burlington Northern to budge on that matter. We believe that it is still a sound business investment to acquire the southern line with this gap, and we believe that it is better for Montana for us to own that southern route with the gap than not to own it at all, and we believe that we can address the problem of that gap in the future and will be better able to do that if we own everything but that 50-mile line at this point.

In that regard, I would like to clear up one thing. We have spoken with the shippers, and while you were absent I did request the opportunity to file a complete written presentation by Dennis Washington, and that request was accepted.

At the end of that statement there is a list of shippers who have supported this transaction, and I can say with a high degree of confidence that substantially in excess of 90 percent of all shippers that we have contacted are very supportive of this, they want to deal with a Montana corporation, they feel that their problems and their transportation needs will be much more quickly and more efficiently dealt with, and that a Montana corporation will be more sensitive to their needs.

I would like to point out that I look at this company that will own the southern rail system as a boutique vis-a-vis a department store, and what we need is a boutique approach to transportation needs in Montana.

Senator EXON. We are about to take a 5-minute break. I am going to try and finish with this panel, if I could, and then we will keep right on going because we have a long ways to go yet.

Let me see if I can shorten this down.

I suppose, Mr. Datsopoulos, that it would be fair to say that if this sale is consummated, you would be delighted if, as Governor of Montana at some time in the future, Frank Morrison would be successful in executing the proposal that he has outlined.

Mr. DATSOPOULOS. As a lawyer and resident of Montana, and as an advisor to Montana Rail Link, I would be very enthusiastic about that creative legal approach.

Senator EXON. The question comes to my mind that Burlington Northern may have had in mind exercising control and therefore rates by their insistence on not giving you your wishes.

What other possible reason could there have been for them not to agree to your wishes to own that 50 miles?

Mr. DATSOPOULOS. I believe that—

Senator EXON. Well, I can ask their representatives that question later, but what is your perspective on it?

Mr. DATSOPOULOS. I think the reason they did that is because they wanted to protect the traffic that we originate on the Montana Rail Link system and ensure that it goes over the rest of their national rail system and that we do not take it and put it over onto their competitor's rail system; namely, the Union Pacific.

Senator EXON. That gets back to a point that I would like to make.

Deregulation, with all of its problems, has really been a good thing for the shippers in Nebraska because we are fortunate, we have two major railroads, Burlington and Union Pacific, that run almost in parallel across the State, somewhat separated, of course, and since deregulation we have had a significant reduction in the costs of transporting our principal commodity which is, of course, agricultural products. So it has been beneficial to us.

When I first heard of this proposal, I thought that the same thing might apply in Montana. It might apply, although the distances are considerably greater. You do not realize how big those distances are until you go to the Big Sky country, as I have on many occasions and as I did this last weekend.

The last question that I think that I would have of you, Mr. Datsopoulos, is the fact that: Why is it that while your organization and Burlington seems to maintain that the present employees and prospective employees of your enterprise have been fully advised as to their options, the employees keep telling us that no, neither side has come forth, broad-based, with a contract. I do understand, and do not know whether it was discussed when I went over to vote or not, that your organization has come to an agreement with the operating engineers, although when I was in Montana I talked to some of the local brothers, and they were not particularly excited about their brothers here signing on to this new contract.

So I do know that there have been specific contacts, in fact, a contract as far as the engineers are concerned, but not the other crafts.

Could you just elaborate without going too much into detail what you have done so we will have it on the record as to the specifics of the options that are available to those that might come to work for your organization, and how much time would they have to make the determination as to whether they want to go with the new railroad, if the sale is consummated, or bump somebody on the northern line, and the benefits and so forth.

Do you feel that you have been sufficiently in touch with the people who you hope will come aboard and run your enterprise?

Mr. DATSOPOULOS. Mr. Chairman, I believe we have been in touch to the degree that we could practicably be in touch. We, after we knew we had an agreement that we felt was solid and prudent from the standpoint of Montana Rail Link, in order to quiet the concerns of the employees, in order to facilitate as smooth a transition as possible, did go and visit with the BLE, or the Brotherhood of Locomotive Engineers. We did after serious discussions with them, reach an agreement with them. That was not very long ago, I believe approximately a month or less than that ago.

That was signed by the chairman of the Brotherhood of Locomotive Engineers, and they agreed to represent all the operating personnel of the new corporation. In fact, the vice president of the Brotherhood of Locomotive Engineers did state and was quoted by the media, in describing that agreement that we now have in place, right now we have the best short line agreement in existence, said R.E. Dean, vice president of the BLE.

That statement I believe speaks for itself. That comes from one of the top railroad officials. After that agreement was negotiated and after we had a firm completed agreement, we arranged a series of meetings, and Bill Brotsky and others from Montana Rail Link—Bill Brotsky, by the way, is the president. He is a former Montana resident, born in Broadus. He has a mechanical engineering degree and an MBA from the University of Chicago. He worked for the Milwaukee. He tried to salvage the Milwaukee as part of a team for 3 years. He then moved on to the Atchison, Topeka and was a major executive there. And we enticed him to come back home and run this railroad for us.

He went to four or five different locations, and in conjunction with the union representative, met with the current pool of employees on this segment, the southern line, and described to them

what the employee package that was negotiated by their own union was.

We are currently in the process of attempting to complete an agreement with the nonoperating employees unions, and we believe that that is close to being completed. Peter Gilbertson is a specialist, he is with me today, in railroad labor law, and he has been involved in those negotiations, and at the expense of maybe even impairing those negotiations because of disclosure, I will ask him to comment on that.

Senator EXON. I would like to hear his comment.

Mr. GILBERTSON. Senator, we are in progress on that. We met all day yesterday. We are meeting again today. On your other point—and that will cover all nonoperating employees, and we are dealing with all the labor organizations that currently represent those employees on the Burlington Northern.

We have agreed with the Brotherhood of Locomotive Engineers and have offered, and I believe will reach a similar arrangement with the nonoperating organizations so that every Burlington Northern employee will have a 60 day period after startup in which to retain Burlington Northern seniority, bring over his vacation time from Burlington Northern, and otherwise be available for a first preference hire on Montana Rail Link. So it is not a 1- or 2-day decision; it is a 60 day decision, and we have that in writing.

Now, we do have to run a railroad, and there is a possibility that if we cannot get enough Burlington Northern employees when we need them, we will go outside. But our commitment in writing, in contract, is to go to Burlington Northern first, in seniority order, and to retain that seniority if anyone comes over from Burlington Northern within 60 days of startup. So we do have a period there. It is not a 1- or 2-day period.

Senator EXON. If I were one of the people currently working for Burlington Northern and if the sale is consummated as presently scheduled, how much time would I have to make a determination to either exercise the option that I would have from the offer that Montana Rail Link is going to propose or the other option I would have, as I understand it, to stay with Burlington Northern and go through the bumping procedure on the northern route.

How many days, or when do I have to make that decision? I guess one of the things that I heard out there—and again, this is what I was told—that they understood that unless they made a determination within I think 48 hours, that they would not get, not be entitled to the bonus proposition for the first year of working for the new road. In other words, they had to decide right now. If they came aboard later, they might come to work, but they would not be entitled to the bonus.

There are two questions in one there. You know what I am getting at.

Can you respond?

Mr. GILBERTSON. Yes. On the first point about the time period and how much time there will be to make that decision, as far as Burlington Northern is concerned, I am not sure—and you can talk to the Burlington Northern representative about how they can bump on Burlington Northern. There is, however, a leave of absence provision that has been negotiated between Burlington

Northern and some of the Burlington Northern unions that will permit a time period there, but I do not feel qualified to talk about that.

As far as Montana Rail Link is concerned, provided there is a job opening, those Burlington Northern employees will have 60 days from time of closing to make that decision.

There are certain critical jobs——

Senator EXON. Wait a minute. Let me understand that.

Mr. GILBERTSON. OK.

Senator EXON. If I am working now in any of the crafts——

Mr. GILBERTSON. Yes.

Senator EXON [continuing]. And the sale goes through, I have 60 days to make a determination?

Mr. GILBERTSON. Provided there is a job opening.

Now, we will—we have to hire certain employees to run the railroad. We cannot wait and have everybody come on the 60th day, of course, and we expect a good number to come prior to that. But we will hold those positions open, and provided we have not filled it because of necessity from some other point, those Burlington Northern employees will have an absolute right to come in with their Burlington Northern seniority. And that seniority will be above non-Burlington employees that we have hired previously.

On the point of the bonus and the eligibility of the bonus, we agreed with the Brotherhood of Locomotive Engineers as an incentive to try to get the employees to make a decision before startup, because we do need to run the railroad, to make the bonus—if an employee did not come prior to startup, that they would not be eligible for the bonus for one year.

Now, given the time constraints, we are negotiating with the nonoperating unions on that provision, and if we change it for them, we will change it for the locomotive engineers. That was not intended to be a penalty; it was intended to be an incentive.

Senator EXON. What about, you heard me speak of the letter I have from the one family that has a son that is in a very expensive program that is covered under the health benefits from Burlington Northern but would not be covered, as I understand it, under the health plan of Montana Rail Link?

That is a specialized case, but I am just——

Mr. GILBERTSON. I am just not qualified to answer that, but we will attempt to provide you with more specific information on that case.

Mr. DATSOPOULOS. May I comment on that?

Senator EXON. Yes.

Mr. DATSOPOULOS. In addition to representing Denny Washington, I also do sue insurance companies, so I have some experience.

I think what happens is that when somebody leaves a group insurance program, they have an opportunity to retain that coverage, but they do not have any control really over the rate that they can charge. Once they leave—that they have to pay to retain that coverage individually outside that group.

Once they leave and go into a new group, which Montana Rail Link would be, the problem would be that most insurance carriers with insurance programs exempt serious pre-existing medical problems. So there is a legitimate gap there that may exist, and I be-

lieve, without committing to anybody because I think that is a serious individual human problem that causes tremendous anxiety for people, that is the kind of thing that may be able to be individually negotiated between the two corporations.

Senator EXON. Well, that is a ray of hope.

Mr. Raney.

Mr. RANEY. Yes, Mr. Chairman, you know, they make it sound so good, but you know, I will let you judge whether this is good or not. Now, Montana Rail Link wants to cut my pay initially by 30 to 40 percent. They want me to work almost twice as much to get that cut in pay. They are going to eliminate my fine insurance policy and give me one that, literally, to use slang, sucks, charge me \$60 a month to get it. Then they are going to force me to move away from my home, which is in Livingston, MT, because they are going to eliminate that terminal; 250 of us now must move away from Livingston a minimum distance of 100 miles.

Then, if we do not all go to work for Rail Link initially and they hire out of state, and we then bump on to the High Line, those men on the High Line can go to work for the Rail Link provided there is a job opportunity for them. This bumping is going to take 60 days to complete. Pity the poor fellows down at the bottom because somebody from Arkansas got his job.

Another point to make. They are talking like this is a great union agreement. Not one union man got to vote on this contract. The majority of the operating craft on Burlington Northern's south line belonged to the UTU. We did not have one word to say about this contract.

We do not want to work under it. It is lousy. And everyone that can is going to remain on the north line. So there are going to be plenty of out-of-Staters come in and take our jobs, provided they are qualified.

So to think that this is a great union deal is hogwash. This is something being shoved down our throats that none of us want.

Senator EXON. Mr. Raney, you said that you would be taking a cut in salary of what, 30, 40 percent?

Mr. RANEY. Significant, you bet, that much we figure. We are figuring this by what they have told us the contract is. I have yet to have a contract in my hands. You know, they have not distributed them. Of course, Burlington Northern has yet to say a word about anything, which you should call to Heather Gradison's attention. She thinks that Burlington Northern has.

Senator EXON. Well, I was just going to ask you, when I asked Ms. Gradison that question this morning, she seemed convinced that the employees had been notified.

She is in error, is that what you are telling me, as far as Burlington Northern is concerned.

Mr. RANEY. Boy, is she in error. Burlington Northern has not said one word to its employees. The last substantial thing we heard from Burlington Northern was about a year ago they came around telling us that they were going to have to have some labor concessions because their profit was only 8 percent and they wanted to run it up to 12 or 14, the cost of what they said it cost them to borrow money.

Now, they admitted less than a year ago they were making 8 percent on their return. But all they are doing is using Montana Rail Link to cut their cost of moving traffic. They are making good money, and they are going to make more on our backs, and so is Dennis Washington and Milton Datsopoulos. They are going to make their money on the backs of the 1,000 people that are losing their jobs and the 250 that will permanently lose their jobs. That is the only profit to be made.

Senator EXON. Mr. Datsopoulos, I just have one last question, and I would tell all of you that there may be some follow-up questions that we may write to each of you for clarification on, and we would appreciate your responding as promptly as you can because, as you can see, we are very interested in this matter, and we are putting a lot of time in on it because it is interesting and very critical, and therefore, if we have overlooked some questions, I would hope that you would respond in writing for the record if we make an inquiry of you.

There has been a lot of talk, Mr. Datsopoulos, about oh, my, we cannot ask for any more time on this, that it could impair the transaction.

As a former businessman myself, I recognize that when an agreement has been made, the sooner the deal is consummated and the money changes hands, the better off it is for most parties involved.

If, for example, the ICC would vote to have a 30-day period when they could take a look into this and maybe hold a hearing on it themselves, how would that impair this sale so long as neither party would move away from the commitments that are now part and parcel of the agreement for you to buy and for them to sell?

Mr. DATSOPOULOS. In several ways. One, we have been prepared and proceeding and layering on expense on top of expense in the form of employees, in the form of facilities, in the form of consultants' costs, in the form of adding additional employees.

Direct costs are probably \$50,000 a week or more out of Mr. Washington's pockets, and we have already spent millions of dollars. In Montana, in the next 30 days the weather changes dramatically and drastically and in terms of efficiently taking over the railroad and running it and diminishing the cost and doing it effectively from the standpoint of moving freight and being an efficient transporter, getting in there while the weather is still somewhat benign is critically important.

Third, we have made arrangements and have a commitment from an international lending institution for the money that is necessary not only to meet the needs of the funding but to give us a comfortable degree of margin.

Based on the erratic financial markets even before yesterday, based on the fact that interest rates are moving up and based on the fact that the whole world is concerned about whether there is going to be any stability at all in the world economy, I think the risks of delaying this 30 days are substantial and significant.

I also think the anxiety factor, the upheaval that the current employees of Burlington Northern who are going to be displaced and will come over to work for Montana Rail Link or go to work for Burlington Northern elsewhere, their lives will remain up in the air. The lives of all the current employees of Montana Rail Link

will increase in stress and anxiety. Everybody will just be more anxious, more concerned, and all the factors will be in greater disarray.

Senator EXON. There has been much talk about the market, and I did check on the market when I was over there. I guess all of you have been tied up in this room, and we are going to take a 5-minute break after I finish this statement.

The market was up 200 points earlier in the trading today. At noon it had lost all but 12 of those 200 points that it went up, and gainers were substantially behind losers on the exchange.

Now, with that factor, is there any chance that because of what happened yesterday and what might happen today and tomorrow and the days intervening between now and October 26 that that October 26 sale could fail to materialize?

Mr. DATSOPOULOS. I can tell you that, in my opinion, that will not fail to materialize unless there is a delay from the ICC.

We have a commitment. Mr. Washington does not become involved in paper investments. He buys, owns and operates from a long-term standpoint operating companies and hard assets, and that is his ownership philosophy and his personal investment philosophy.

I have spoken with him as recently as yesterday evening, and it is his intention that he wants to own the railroad, that he is capable financially of owning the railroad, that he can manage and operate it effectively, efficiently and in the best interests of the State of Montana. Disregarding what happens to the financial market, he intends to make that investment.

Senator EXON. Thank you very much, panel. You have been a very informative panel.

We are going to recess for 7 minutes, and we will reconvene at 1:30 p.m.

[Brief recess.]

Senator EXON. The subcommittee will please come to order.

We are now pleased to call the next panel, which is a panel of railway labor witnesses: Mr. James Kennedy, Jr., executive secretary of the Railway Labor Executives' Association of Washington, DC; Mr. Fred Hardin, international president of the United Transportation Union; and Mr. James D. Shell, vice president of the Brotherhood of Locomotive Engineers.

Gentlemen, welcome to you. In the order I have here, we will recognize Mr. Kennedy first, if that is acceptable to the panel.

STATEMENTS OF JAMES J. KENNEDY, JR., EXECUTIVE SECRETARY-TREASURER, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY WILLIAM G. MAHONEY, COUNSEL; FRED HARDIN, INTERNATIONAL PRESIDENT, UNITED TRANSPORTATION UNION; AND JAMES D. SHELL, VICE PRESIDENT, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Mr. KENNEDY. That is acceptable to me, Mr. Chairman. Thank you very much.

Mr. Chairman, my name is Jim Kennedy. I am the executive secretary-treasurer of the RLEA. Appearing with me today is William G. Mahoney, RELA's attorney.

I have a prepared statement which I ask be printed in the record.

Senator EXON. Without objection.

Mr. KENNEDY. With your permission, in order to conserve some time I will summarize.

I would like to say that as important as Montana Rail Link is and as important, I recall our testimony on the House side, as the Lake Erie problem is, that those two situations, Montana Rail Link, which we spent a lot of time on today, and the Pittsburgh and Lake Erie, which we spent a lot of time on on the House side, are just symptoms of the overall problem.

The problem is a lot bigger than even those two important issues. It is a national problem. Our Nation's rail system is undergoing a drastic change. It is evolving into a system comprised of a handful of main line long-haul carriers which are being fed their traffic by a myriad of short line and regional carriers.

It would be one thing if this change were the result of a deliberate policy decision of the Congress made after consideration of the short- and long-term ramifications of such a change, but it is not. Rather, it is, as described by ICC Chairman Gradison, a "pleasant, unexpected result" of the Staggers Act created by the Interstate Commerce Commission.

This unexpected result has not been pleasant to all. It has caused a massive dislocation of rail employees, resulting in the loss of employment for thousands of employees and the loss of benefits and income for those few employees who are able to obtain jobs with the new rail operators.

What is especially disturbing about all this is that the Commission is deliberately using this extensive injury to railroad employees as the enticement to encourage our Nation's railroads to sell vast portions of their systems to this new form of rail carrier.

These sales are accomplished with no regulatory oversight, no consideration for the contractual or statutory rights of the employees, and with no idea of whether the new railroad is even capable of operating.

Two of the three bills pending before, you S. 816 and S. 1026, would provide some time beyond the present 7 days when these sales routinely become effective for protest and ICC consideration.

The third, S. 1040, attempts to prevent the abuses inherent in the Commission's policy.

We fear, however, that, as written, all three would be ineffective. The addition of a few days before sales become effective means little when the consistent conduct of three of the commissioners indicates the Commission will approve every sale presented to it.

The language of S. 1040 which defines its applicability to a "rail carrier providing transportation" is identical to the language of section 10901 which the Commission has already read as being applicable only to nonrail carriers not providing transportation. We believe the Commission will rule S. 1040 changes nothing.

According to both the ICC and the railroads, the Commission's "exclusive and plenary" jurisdiction relieves the railroads of any obligation toward rail employees either to bargain with employees over the impact of the sale and working conditions or to honor ex-

isting collective-bargaining agreements that may in any way make the sale inconvenient or increase its costs.

The ICC has extended this arrogation of authority over railway labor relations, to mergers, leases and control cases, permitting railroads currently to strip employees even of their representation rights and mergers that were consummated years ago.

Unfortunately, the courts have considered themselves powerless to interfere with the ICC's jurisdiction in the matter and, as a result, the employee has no forum to which he can turn to retain his existing statutory and contractual rights except to the Congress or by engaging in self-help.

Major railroads are now able to curtail their systems, abolish the jobs of employees, and furlough those employees without first complying with the Railway Labor Act by giving advance notice of their intent to affect existing working conditions as required by section 6 of that labor statute and without first negotiating with their employee representatives over the impact of that decision to sell on employees.

While Congress may indeed have deregulated the rail industry's rates and liberalized the regulation of mergers and abandonments, the Commission has taken upon itself the authority to deregulate labor relations in the industry by releasing carriers from their Railway Labor Act and collective bargaining agreement obligations.

For entrepreneurs, the ICC's new policy has given them an opportunity to acquire viable lines at minimal costs. Indeed, if Tennessee is typical, Federal, State, and local funds make up about 88 percent of the investments in the short lines in that State. The existing railroads are virtually begging the entrepreneurs to acquire these lines at very low prices during this window of opportunity that appears to them to be too good to be true.

Moreover, investment bankers and other lenders are willing to lend moneys to these new carriers in exchange for security interest in the property being acquired and favorable repayment and interest terms.

Employees are stripped of contractual rights and benefits, though in many cases they were paid for by employee concessions in collective bargaining and which guarantee them as their written continued employment or its equivalent in wages. Those agreements, according to the railroads and the ICC, are now meaningless.

So the railroads have the best of both worlds. After accepting and enjoying labor's concessions, they simply repudiate the contract.

For the public, this new ICC-created transportation policy means that this country is developing a rail system that consists of major regional and short line operators that are, in many cases, financially unsound, undercapitalized, and staffed by management and employees that do not have the skill or resources to operate efficiently and safely.

No public agency has examined these new operations to assure the public that they are sound financially and are able to operate competently. Yet, they are in fact operating thousands of rail lines, but for how long no one has the information to predict.

Since 1980, approximately 160 regional and short line railroads have been formed, many of which are subsidiaries of existing carriers. These railroads will operate over 15,000 miles of lines, employ about 5,000 employees, replacing, despite what Mr. Riley had to say, roughly three times that number who used to operate the lines being sold.

While we do not have exact figures, it appears that roughly 30 of those post-1980 new carriers have filed for reorganization under the Bankruptcy Code, including the Chicago Central & Pacific Railroad which had been touted as a prime example of a successful regional carrier.

Senator EXON. Let me interrupt you right there so we get the record straight.

The railroad that you just made reference to that went into bankruptcy, as I understand it, and I happen to know something about that road, is no longer in bankruptcy, is it?

Mr. KENNEDY. It has been reorganized yes. I was talking about the CC&P itself, but Jack Haley, who is the operator there, is no longer with the CC&P.

Senator EXON. It is not in bankruptcy? Has it been taken out?

Mr. KENNEDY. Not to my knowledge, Senator.

Senator EXON. It is still in bankruptcy?

Mr. KENNEDY. As far as I know.

Senator EXON. I just wanted to correct the record. I was told that it had, indeed, been taken out of bankruptcy, and I wanted to say that. I would think, just for the record, that from the information that I have, that while that road was taken into bankruptcy, it should not have been taken into bankruptcy.

As you know, there was an action opposing the bankruptcy because it was a profitable railroad and had no business being in bankruptcy. So in that particular case, I just want to clarify for the record I suspect that the bankruptcy action there was part of a power play between the instant parties rather than a typical bankruptcy because the road failed because it was not viable. I think it was a viable railroad.

I do not mean to interrupt you, but I want to keep the record straight when I know of something.

Mr. KENNEDY. I accept that, except that I would suggest that in the other 29 cases, at least, there were not those special circumstances that exist in the CC&P.

It seems to us that the FRA could tell you precisely how many and which of these new railroads have gone bankrupt, and that is information you should have.

In summary, this country is a long way down a road to creating a network of short and regional rail lines which are being established at the soul expense of employees and appear to us to be questionably financially unstable.

Since many of these sales are, indeed, economically unsound, I would suggest the ICC has created a time bomb which may be triggered by a recession, and yesterday's stock market results speak to that, or even by a serious derailment.

We urge the Congress to halt the explosion of new, unregulated sales until the proper authority, the Congress and not the ICC, can

determine whether this Nation should encourage this form of feeder line long haul rail systems.

Moreover, we urge Congress to enact legislation such as is contained in H.R. 3332 and attached to our prepared testimony which will assure that this new rail system and, indeed, the entire revamped rail network in this country will not be created by the blood and sacrifices of employees and their families.

Thank you very much.

[The statement follows:]

STATEMENT OF R.I. KILROY, CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is Richard I. Kilroy. I am the Chairman of the Railway Labor Executives' Association and International President of the Transportation Communications Union, formerly the Brotherhood of Railway and Airline Clerks. My office is located at Three Research Place, Rockville, Maryland.

The Railway Labor Executives' Association (RLEA) is an unincorporated association with which are affiliated the chief executive officers of virtually all of the standard national and international labor unions which represent railroad employees in the United States.

On behalf of the nation's railroad employees whom we represent, I would like to present to you our views on the short line and regional railroad phenomenon created, not by Congress but, by the Interstate Commerce Commission and what we believe will be its short-term and long-term effects.

Generally, we support legislation such as that proposed by Senator Baucus, S. 816, Senator Burdick, S. 1026 and Senator Melcher, S. 1040. However, we believe something more is needed if the railroad industry is not to go spinning off into the future guided only by those who would make the biggest dollar in the shortest time and leave what is left for others, i.e., the taxpayers, to resuscitate.

We believe that the three bills presently before this Committee do not effect the protection of the public's interest in the future of our rail system that is needed now if we are to have a viable rail system in the future.

S. 816 and S. 1026 would give the governors of the states affected by a Section 10901 short line sale 30 days' notice and a chance to protest to the ICC. S. 1026 would extend that right of protest to any "interested party." The ICC is now considering extending its 7-day class exemption notice under which Class I railroads such as Wisconsin Central are created in one week. But a few more days and the right to file a paper is not the answer. If three of the five members of the ICC will always automatically approve all exemptions a few days more or less becomes irrelevant.

S. 1040 is designed, we believe, to prevent the abuse of the "pleasant, unexpected result" of Staggers, as Chairman Gradison describes it, evidenced in the Wisconsin Central, Montana Rail Link and P&LE cases where large railroads are sold under the class exemption rules of the ICC. However, we fear it will prove ineffective because the language used in S. 1040, "rail carriers providing transportation subject to such jurisdiction", is identical to the language of Section 10901, "rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission" which the ICC interpreted as meaning "non-carriers not providing transportation" until the ICC approves the exemption or application to purchase a line under § 10901. In the case of S. 1040, the Commission could maintain that it has already interpreted identical language to mean "non-carriers" created to purchase and operate a rail line and, therefore, S. 1040 changes nothing.

Cases The effects of the Commission-created national rail policy are many and, we submit, should be considered by this Committee and the Congress. We believe Congress should decide whether it or one of its statutory creatures, the ICC, should determine our national transportation policy and implement that policy without specific guidance or approval from the Congress. We also submit the Congress should consider whether it is to have the ICC take control of labor relations in the railroad industry to the exclusion of the National Mediation Board as has occurred as another unexpected result of Staggers.

In its zeal to deregulate the railroads beyond the limits of deregulation set in Staggers, the Commission decided to remove the Railway Labor Act and collective bargaining agreement obligations of these railroads which seek approval of mergers, leases, acquisitions of control, etc., from the ICC. In those instances in which the Commission imposes so-called employee protective conditions, it takes the position that it, the ICC, has approved everything the railroads involved may ever want to

do as a result of the merger or acquisition of control; and, that the Commission's approval of that merger, etc., supercedes whatever rights employers may have under their contracts even to the extent of depriving them of their right to representation under the Railway Labor Act.

Contrary to its historical interpretation of its duty to accommodate the Interstate Commerce and Railway Labor Acts, the ICC now holds that in all instances, including those in which the Interstate Commerce Act gives the ICC no authority such as consolidation of shops, offices or yards, the Interstate Commerce Act and the Commission's order supercede, i.e., eliminate, employees' collective bargaining agreement rights and Railway Labor Act rights. Indeed, in a recent paper filed with the National Mediation Board, the CSXT informed the Board that if it did not give the railroad what it wanted it would act unilaterally to obtain its goals through the superceding authority of the ICC even though the CSXT conceded "it is more consistent with the purposes of the Railway Labor Act for the National Mediation Board to do the job."

This "unexpected result" of Staggers is a most serious intrusion by the ICC into the labor relations of the railroad industry; an intrusion which the ICC carefully avoided for the first 94 years of its existence.

A third effect of the ICC's current position is its deprivation of rail employees' livelihoods with no consideration of their welfare and the fact that their sacrifices are indeed what makes the sales of the short lines possible. These employees often have 20 to 30 years or more of service with the selling railroad and are totally cast aside; too old or specially skilled to obtain work and too young to retire.

We shall next discuss these "unexpected" effects of Staggers.

The sales of failing short lines to entrepreneurs is one thing; however, the sales of railroad properties coursing thousands of miles throughout this nation is quite another. Today, with the elimination of virtually all procedures by the ICC whereby it can determine whether certain, or indeed any, of these sales are consistent with our long-term public interest, sales of railroad lines ranging across vast areas of our country are made to virtually anyone on 7 days' notice. Neither the Commission, nor the Congress, nor anyone else knows whether any of these newly-created railroads can withstand the effects of a serious recession or whether they will be available to respond in a crisis should the demands of our national defense so require. Indeed, under the ICC's current regulations, there is no need to file a copy of the sales agreement, nor need the new operator file anything to show that it has the financial ability, management or staff to operate safely.

It is constitutionally clear that it is the Congress, and not one of its agencies, which is to determine whether the creation of a national transportation policy establishing a short line and regional railroad network in the United States is in our national interest. This Committee and its counterpart in the House are charged with the responsibility for initiating national transportation policy. On the other hand, the Interstate Commerce Commission is granted no such authority under the Constitution of the United States. In executing its responsibility in the creation of a short line-regional rail network for this country, the Congress would, as indeed it should, investigate all aspects of the effects of such a network prior to its development. For good or ill, that network is a long way down the road in development and the Congress has had nothing to do with determining whether we should develop such a network, nor with determining its effects upon the railroad system in the United States. Rather, it has been solely the ICC which has decided to create and nurture this new rail system.

To permit a congressional agency to create a policy so significant and far-reaching in its effects, creates not only a dangerous precedent if allowed to stand, but creates a significant threat to the economy of this nation and to its national defense, both of which depend in no small part upon an adequately functioning national rail network. The remainder of this statement will be devoted to detailing the hemorrhage of railroad sales which have taken place as a result of what in Chairman Gradison's view has been a "pleasant, unexpected result of Staggers"; the ICC Class Exemption procedures which have exacerbated this hemorrhage and permitted the sales of railroads 2,000 miles in length in a period of seven days without an opportunity for anyone to be heard even when they can produce evidence showing "grievous errors" and "falsehoods" in the railroads' notices; the extensive use of federal and state funding to support these short lines and regional railroads; a review of the statistics, including the numbers of short line railroads created before 1980 and those since 1980 and the larger short lines sales which have taken place since Ex Parte 392 was issued in 1986; the number of bankruptcies which have occurred in these railroads; the number of miles each runs; the average length of line which is sold; and the number of employees which operate pre-1980 and post-1980 short lines as well as the

number of employees required to operate Class I railroads; and finally, the fact that this "pleasant unexpected" short line phenomenon has been used, with the ICC's blessings, as a vehicle for stripping employees of their rights and neutralizing the effect of organized labor in the railroad industry.

On June 8, 1987, the Supreme Court vacated the decision of a lower court which had held that the Interstate Commerce Commission had to make a finding that exemption from other laws was "necessary" to carry out a "transaction" approved by the ICC. Five of the Justices held the lower court to have had no jurisdiction because of a procedural technicality; four Justices, however, concluded that the lower court had jurisdiction but its decision should be reversed because the statutory exemption was automatic and the ICC had to make no "necessary" findings. See *Brotherhood of Locomotive Engineers, et al. v. Interstate Commerce Commission, et al.*, 96 L. Ed 2d 222 (1987).

If the exemption is automatic with regard to the Railway Labor Act, it is automatic with regard to every statutory law contained in the federal and state codes. And the Commission has held, as have the arbitrators appointed to determine disputes under its ironically named "employee protective" conditions, that though a change in operations, services or facilities adversely affecting employees may occur years after the Commission's order approving a merger or control case has been fully executed by the railroads, that change is automatically immunized from any restrictions imposed by collective-bargaining agreements or the provisions of the Railway Labor Act. This is an entirely new course for the ICC, for until recently, the ICC had stated over and over that its orders did not relieve a rail carrier of its contractual obligations, and that compliance with the Railway Labor Act normally did not prohibit a carrier from implementing the financial transaction which it had approved.

In light of the dangerous turn which the Commission's unilateral deregulation of the railroads' obligations to their employees has taken, we pose three questions for the consideration of this Subcommittee and the Congress:

1. When the Congress authorized the Commission to impose in its discretion conditions for the protection of the interests of railroad employees in certain sections of the Staggers Rail Act, did it intend that the Commission should *never* exercise that discretion to protect employee interests?

The Commission has answered this question in the affirmative:

"We . . . reaffirm . . . our long-standing and judicially approved policy of not imposing labor protective conditions on acquisitions and operations under section 10901 . . . [W]e will not impose labor protection even on established carriers acquiring or operating such lines. . . . [W]e would not impose protective conditions if an application or individual exemption were filed."

The U.S. Court of Appeals for the D.C. Circuit recently affirmed this holding of the ICC. See *Railway Labor Executives' Association v. Interstate Commerce Commission, et al.*, 819 F.2d 1172 (D.C. Cir. 1987). Indeed, since 1980, the ICC has not once exercised its discretion and imposed employee protective provisions, or even a priority of hiring requirement, on either party to a Section 10901 sale.

2. In enacting the Staggers Rail Act, did the Congress intend to transfer the governance of labor relations in the railroad industry from the Railway Labor Act, the National Mediation Board and the National Railroad Adjustment Board to the Interstate Commerce Act and the Interstate Commerce Commission?

The Commission has answered this question in the affirmative:

"It is that [Commission] order, not the RLA [Railway Labor Act] or WJPA [Washington Job Protection Agreement—a contract between the railroads and the unions], that is to govern employee-management relations in connection with the approved transaction."

The arbitrators agree.

A third issue surfaced in the December 24, 1985 decision of the Commission approving the purchase of some 650 miles of Illinois Central Railroad line in Iowa by the Chicago, Central & Pacific Railroad Company. The latter railroad was created to purchase and operate the line and was owned by Mr. John Haley who also owned the Cedar Valley Railroad Company. As you know, Mr. Haley's major railroad, CC&P, filed for Chapter 11. Mr. Haley settled with his creditors and we understand has left the industry.

The Interstate Commerce Act provides that when an individual owns one railroad and wishes to purchase another railroad he must apply for ICC approval under Section 11343 of the Act. Section 11347 mandates that the Commission must impose employee protective conditions upon every approval order issued under Section 11343. Of course, Mr. Haley could have sought relief from the requirements of Section 11343 by applying for an exemption under Section 10505 of the Act. These ex-

emptions are liberally allowed by the Commission. However, Section 10505 empowers the Commission to exempt applications from every provision of the Interstate Commerce Act except Section 11347 and similar provisions found in the Act requiring employee protection.

Consequently, instead of seeking an exemption under Section 10505, Mr. Haley placed his Cedar Valley Railroad stock in a voting trust to commence with the filing of Mr. Haley's purchase application under Section 10901—knowing the Commission has stated that it will never impose employee protective conditions under that provision of law—and to terminate immediately upon the Commission's approval of the purchase.

This evasion of the employee protection requirements of the Interstate Commerce Act was challenged as such by the RLEA and was acknowledged to be such by the Commission. Yet, the Commission approved it simply because its members and staff oppose providing employee protection even in the face of a congressional direction to do so.

Today, existing carriers no longer have to resort to the fiction of a temporary "voting trust" to avoid the will of Congress that rail employees not be used as the source of rail economies which provide no real economic benefit for the public. Instead, rail systems are taking advantage of an artificial distinction which the Commission has created between "acquisitions" under Section 10901 and "purchases" under Section 11343. According to the Commission, Section 10901, with its discretionary employee protection, applies to any sale of an existing line or railroad to a newly formed carrier, even if that new company is a subsidiary of an existing rail system. On the other hand, section 11343, with its mandatory employee protection requirement, applies to the sale of an existing line of railroad to an existing and functioning rail carrier. Recently, the Commission has extended its "newly formed" entity theory to include under Section 10901's coverage transactions involving newly formed entities, which are specifically enumerated in Section 11343, such as trackage rights, leases, and contracts to operate, and which were, until the 1980's, accepted as being within the scope of Section 11343 and subject to the mandatory employee protection requirements of Section 11347.

Moreover, until recently, Section 10901 was not exclusive in that a transaction would be viewed realistically as being comprised of various components, such as authority to operate under Section 10901 and trackage rights under Section 11343. Ironically, Section 10901 has gone through this recent metamorphosis even though the basic provisions of that section and Section 11343 were first added to the Interstate Commerce Act in 1920 and have remained substantially unchanged since then.

Why this sudden expansion of Section 10901? The answer is simple and well known to all: Under Section 10901 the Commission has the discretion to refuse to impose employee protection, and since 1980 it has not once exercised that discretion in favor of employees. Even when rail labor proves that a transaction is structured as a sale to a newly formed entity primarily, if not solely, to avoid Section 11343 and the mandatory protections of Section 11347, the Commission buries its collective head in the sand and does not pierce the corporate form as justice requires.

The third issue, therefore, is as follows:

3. Whether, the Congress intended the mandatory employee protection requirements of Section 11347 to be evaded by the expedient of a temporary voting trust or the creation of a new corporate subsidiary, where the voting trust arrangement or the new subsidiary is specifically designed to accomplish that evasion?

As noted above, the Commission has also answered this question in the affirmative.

It is today a supreme irony that the commonly understood most effective way to avoid employee protection is to file an application with the ICC. (See Exhibit "J" attached to the RLEA Statement referred to below.)

These policy statements and positions of the Commission are completely irreconcilable with its own pre-Staggers Rail Act positions and statements of policy when compared with the traditional treatment of railroad employee interests by this Congress in Staggers and earlier legislation; and, they contradict the rationales of all holdings of the Supreme Court under earlier statutes.

Rail labor finds such a policy intolerable and incompatible with continued peaceful labor relations in the railroad industry which, as the Supreme Court long ago noted, are endangered when employees are deprived of just treatment.

We submitted to this Subcommittee on June 17, 1987 a "Statement of the Railway Labor Executives' Association on Staggers Rail Act Oversight" (Statement) which details, with supporting exhibits, the history of employee protection in the railroad industry before the Congress, the Courts and the Commission, prior to Staggers; Congress' extensive protection of employee interests in Staggers; and the present

Commission's defiance of that tradition by the blatant arrogation to itself of policy determinations restricted to the Congress by the Constitution. The Commission statements quoted above appear at pages 40-41, and 50, respectively, of the Statement and its statements on the use of voting trusts to evade the employee protection requirements of the law are set forth in Exhibits "G", "H" and "I" attached to the Statement.

An aspect of the "short line phenomenon which has not been considered is there potential longevity. The ICC has no idea whether any short line has the financial or traffic base to stay in business of any length of time. The ICC asks few questions and answers are not volunteered. Many of the short lines are financed with seed money from the railroads which sold them the rail lines; many are operated by former middle level managers of the selling railroads who "retired" in order to run the new short lines. Virtually all of them were created solely to buy or lease the railroad lines involved. Almost none has a financial foundation sufficient to withstand a prolonged recession—the type of recession which some economists are predicting for 1989 or 1990. Every one of these short lines could abandon operations on 30 days' notice if the going got tough, indeed any of them could declare themselves "cashless" and cease operations overnight. If they did so no one could do anything about it, including, unfortunately, the Congress, unless the Congress was willing to buy the lines in order to preserve our rail system.

The Commission in its zeal to deregulated railroad managers has come to view employee protective provisions as being a counterproductive regulatory burden which should be eliminated. Where they cannot be eliminated, they should be used as a sword to abrogate existing employee contractual and statutory rights. In those situations where the Congress has commanded the Commission to impose provisions to protect employee interests, the Commission, since 1983, has viewed these protections as authorizing a carrier or an arbitrator to select which, if any, existing collective bargaining obligations will survive the transaction, even where there is no showing that the abrogation of existing rights is necessary to enable the carrier to implement the financial transaction approved by the Commission. Indeed, if such a showing were required, it could not be made, for in the sixty years that the Railway Labor Act and the Interstate Commerce Act have existed side-by-side, not one financial transaction has been prevented from being implemented because a participating carrier was obligated to comply with the Railway Labor Act or to honor existing contracts until they were changed by collective bargaining.

And in those cases where the Commission believes that it has discretion to impose, or to not impose, employee protection, the Commission has used that discretion as a means to accomplish its policy of creating a national rail system of a few long-haul carriers and a network of short or regional feeder lines. It has used that discretion to accomplish its goal by informing both rail carriers and employees that unless it was presented with "exceptional circumstances," a term which it has never defined, it would not impose any form of employee protection, including a priority of hiring obligation. According to the ICC, it will not impose any form of protective obligation on the new operator because "the burden of new operations is great enough without the additional cost of labor protection." Also, it has not, since 1980, impose a protective obligation on the selling carrier "for the reason that the potentially large expense of labor protection, could, by compelling a larger selling price, indirectly burden the new operator, or discourage the sale of marginal lines, leading to their deterioration and ultimate abandonment." *Central Michigan Railway Company—Acquisition And Operation—Certain Lines Of Grand Trunk Western Railroad Company*, Finance Docket No. 31059, served September 4, 1987.

In other words, the Commission has informed this industry that if any existing carrier wishes to rid itself of a part of its system which does not fit within that carrier's long range plans, it should sell that line. Moreover, the Commission's advice reads, such a sale of an existing line of railroad can be made without incurring obligations to employees, if the sale is to a newly formed entity, even if that entity is a subsidiary of an existing carrier. The carrot to encourage these sales is the Commission's promise that the agency will not impose any provisions to protect employee interests, and that the Commission will support the selling carrier in its arguments that the ICC's "exclusive and plenary jurisdiction" over rail sales has relieved them of any obligation either under the Railway Labor Act to bargain with their employees over the impact of the sale, or under existing contracts to protect employee interests.

That the ICC has been successful in encouraging short and regional line sales is evident from the statistics dealing with such railroads. Our review of short lines shows that in the 140 years between 1840 and 1980, approximately 325 short lines were formed involving over 19,200 miles of line and employing 28,600 employees.

Since 1980, however, there has been an explosion in such lines and the addition of a new category—the regional line. Approximately 120 railroads of less than 100 miles each have been formed since the beginning of 1980, involving 3,200 miles of line and employing about 820 employees. Also, roughly 34 railroads of 100 miles or more, including the recent Wisconsin Central Ltd., have been formed since the beginning of 1980; those lines involve about 12,200 rail miles and employ around 3,800 employees. We have attached ¹ to this statement various charts listing these short and regional lines, their mileage, and where available, their employee numbers. As you can see by comparing the mileage with the number of employees, the post-Staggers group of short line and regional operators employ far fewer employees per mile than before. The figures contained in these charts are accurate to September, 1987, but since the proliferation of short lines and regional railroads continues at a harried pace, several new short lines have begun operating (i.e., *Central Michigan Railway Company—Acquisition and Operation—Certain Lines of Grand Trunk Western Railroad Company*, F.D. 31059, served September 4, 1987) and others are waiting, such as the P&LE Railco.

While this new class of rail system was devised by the ICC to prevent the abandonment of rail lines, the method adopted by the Commission to achieve its national transportation policy—i.e., *Ex parte 392*—has in practice allowed the wholesale divestiture of profitable and un-abandonable lines. Under the regulations adopted by the Commission in *Ex Parte 392* to implement its policy, there is no restriction on the type or size of the rail lines which can be transferred, nor is there any requirement that the selling carrier show that it is financially viable or has the competence to operate safely. In fact, the parties do not have to file a copy of the sales agreement; all that is required is that the buying entity file a Verified Notice of Exemption with the ICC, which is usually of three to four pages with a sample of the notice which the Commission will publish in the Federal Register, usually 30 days later. That exemption is effective automatically seven days after it is filed with the agency.

Any effort to have employee protection imposed must be by way of a petition to revoke the exemption which will not be considered by the Commission until after the exemption is effective and the sale has been long closed. This means that rail labor is effectively denied any opportunity to obtain a priority of hiring requirement or consideration of employee impact. An after-the-fact remedy cannot, as a practical matter, undo the harm which has occurred in the interim. Indeed, as shown by the attached letter from the Alaska Railroad to its employees, new operators are deliberately avoiding using the selling carrier's employees and are, in many cases, seeking people with no prior connection to the selling line or its unions. The original employees are simply ignored by both the buyer and the seller.

Perfect examples of the problem of attempting to address the employee impact issue after the sale is long closed, are the Wisconsin Central sale and the Guilford leases. In the Wisconsin Central case, the Soo, which is the selling railroad, has required the Wisconsin Central to hire Soo employees, but insisted that only those Soo employees who have resigned from the Soo be hired. By requiring resignations, the Soo is forcing its employees to forfeit any right to protection from the Soo under existing contracts. What makes this resignation requirement so inequitable is that the Soo has steadfastly refused to acknowledge that this sale is one which is covered by the existing protective agreements and has refused to arbitrate the dispute over its interpretation of its agreements before employees are affected so that the employees will know what their rights are before they have to choose between a job with the Wisconsin Central and staying with the Soo by relocating elsewhere on the Soo system. An after-the-fact remedy will not give displaced Soo employees a job with the Wisconsin Central or undo the harm which the forced resignations have caused.

In the Guilford lease case, rail labor has been arguing for over ten months that the leases are the form of transaction which requires a protection that prohibits Guilford from consummating the lease before it has reached an agreement with its employees devising a method to select the forces to perform the lease work—in other words, an agreement which allows the employees to follow their work. The Commission has had that contention “under advisement”, but in the meantime has permitted Guilford to consummate its leases and transfer virtually its entire rail system to its subsidiary for the sole purpose of avoiding its contract obligations to its employees and reducing their wages.

¹ The attachments were not reproducible.

Although the Commission has informed Guilford that it is consummating these leases "at its peril," that has not stopped Guilford, nor has it spurred the Commission to make a decision in the case. In the meantime, however, thousands of Guilford rail system employees have been harmed, some by losing their employment totally, and all by being required to work under rates of pay, rules and working conditions which are less than they enjoyed before and on which they have had no collective voice. An after-the-fact remedy here will not cure the injuries which have occurred this past year.

After-the-fact remedies for both rail labor and the public also suffer the defect of not being able to restore the financial status quo which existed before the sale occurred. Many of the new short lines involve investments running in the tens if not hundreds of millions of dollars, but, we submit, if the Congress were to examine the source of those monies, it would discover that the funds are being provided by state, local and federal sources and by loans leveraging the assets being purchased. Very little capital is originating from the owners of the new companies. For example, it was recently reported that some 12 short lines have been created in Tennessee on a total investment of \$17.3 million. Of this amount, \$5.9 million (32.9%) was supplied by the Federal Railroad Administration; \$2.5 million (14.5%) by "other federal sources"; \$5.7 million (32.9%) by the State of Tennessee; \$1.1 million (6.3%) by city and county governments; and \$2.1 million (12%) by private sources. It is doubtful that the situation in Tennessee is unique. If it is typical, then the taxpayers are paying for 88% of a system which very probably will collapse at the first sign of economic trouble since the private investment is comparatively very small. This means that this nation is developing a rail system which is heavily leveraged and in debt with fixed costs that make the new carriers extremely vulnerable to the slightest economic downturns, either by recession or from a train derailment. In fact, of the short lines currently in existence some 20 to 30 have filed for bankruptcy protection against creditors. The tenuous position of short line and regional railroads is reflected in the recent Chapter 11 bankruptcy filing of the Chicago, Central & Pacific Railroad Company. (In re Chicago, Central & Pacific Railroad Company, Debtor., Bankr. Ct. N.D. Iowa, No. 87-01862W) on September 1, 1987. Furthermore, by frequently cross-utilizing employees, many of these new operators are using inexperienced employees to perform jobs which a person must be experienced to perform competently and safely. Thus, they are inviting accidents to their employees and to the public.

SAFETY ON SHORT LINES

In the railroad industry, smaller is not equated with being safer. Overall, short line railroads have worse safety records than the Class I railroads. Even though some small railroads travel at lower speeds over shorter distances and own less equipment, this has not shown to be the primary factors in reducing accidents. Statistics comparing short line railroads with Class I carriers consistently show that the smaller railroads are worse.

A comparison of the official Federal Railroad Administration (FRA) statistics the last couple of years will demonstrate this point. The preceding years also are consistent with these numbers.

TRAIN ACCIDENTS PER MILLION TRAIN MILES

	1985	1986
Class I ¹	5.95	4.62
Class II ²	7.53	6.96
Class III ³	6.18	6.62

¹ Gross operating revenue in excess of \$50 million.

² Gross operating revenue between \$10 million and \$50 million.

³ Gross operating revenue less than \$10 million.

Even though the Class II and III railroads operate 13 percent as many train miles as Class I carriers, the small railroads were involved in 16 percent of the collisions and 18 percent of the derailments in 1986.

Also, the casualty rates on short line railroads are higher, as shown below:

CASUALTY RATES FOR EMPLOYEES ON DUTY PER 200,000 MAN HOURS

	1985	1986
Class I.....	8.09	6.37
Class II.....	10.81	9.56
Class III.....	12.35	11.36

This category is probably the best indicator to compare the railroad's records because the work of employees on a short line is very similar to that on a major carrier.

In 1986, in non-fatal casualties to all persons in all accidents and incidents, the small railroads accounted for 5,173 injuries and Class I railroads had 21,750 casualties (which is almost one-fourth of the injuries that occur on large railroads).

In view of railway labor, the poor safety performance of small carriers is due in large part to the inexcusable failure of the FRA to take the initiative in enforcement of the safety laws against such railroads. The FRA rarely inspects these carriers for violations, and in comparison to large railroads it imposes even less fines. Also, the FRA routinely grants waivers to the small carriers from many of the safety regulations. With such an attitude by federal officials, it is not surprising that the safety statistics on short lines are worse than Class I railroads.

CONCLUSION

Rail labor submits that it is for Congress, not the ICC, to determine the proper future course of our national transportation policy as it relates to the recent short line-regional railroad phenomenon, and that such a policy be implemented in a manner consistent with past congressional mandates for the protection of the statutory and contract rights of railroad employees. As a means of restoring the balance between the Railway Labor policy and the rail transportation policy as well as provide some modicum of protection for employees and their families who bear the brunt of the "unexpected results" of Staggers, we support enactment of H.R. 3332 introduced in the House by Congressman Walgren and others.

Senator EXON. Thank you, Mr. Kennedy. Who is next?

Mr. Hardin.

Mr. HARDIN. Mr. Chairman, my name is Fred A. Hardin, and I am president of United Transportation Union. I appreciate the opportunity to appear before your committee today, and I would ask to read my testimony into the record.

Senator EXON. It will be made a part of the record.

Mr. HARDIN. I just want to make a few comments.

I think this thing has been reviewed and discussed to great length, but speaking as the president of the union, Mr. Raney, who testified here today and I thought made a very, very intelligent and knowledgeable testimony about this situation, is a member of my union and has been an employee of Burlington Northern for some 38 years.

The Chairman of the ICC was asked about the traffic and so forth. It is a matter of record that at this present time Burlington Northern has more trains and more traffic running over the southlands and the northlands than ever in the 100-year history. They operate 15 to 20 trains a day over the southland, and they operate 20 to 30 trains a day over the northland.

We also saw in the papers a few days ago, wheat and corn shippers are clamoring for service from Burlington Northern. Mr. Gaskins said yes, they needed 5,000 new hopper cars to haul this wheat. The elevators are full, and there are thousands of tons on the ground. He says we are not going to buy them, we are not making enough profit.

In 1985 we negotiated a national agreement. At UTU, we represent approximately 80 percent. The BLE represents the engineers. We represent them on some railroads, but we represent all the trainmen, switchmen, conductors, yard masters and so forth. We represent about 80 to 85 percent of the operating employees.

We have made the most concessionary national agreement, including Burlington Northern, in 1985 that we have ever made. We had already entered into crew consist reduction rules with Burlington Northern and all the major railroads.

The agreement we made on October 30, 1985, as I say, contained more concessions, and every railroad was well, well pleased with the agreement. Then Burlington Northern immediately found a loophole to go to the ICC and eliminate the Railway Labor Act, eliminate any responsibilities of the employees, and to circumvent not only the Railway Labor Act but to circumvent the intent of the Staggers Act.

We have never complained as unions and employee representatives. We have never complained about a branch line or switching spur or any endangered species of railroad line being abandoned or being sold if somebody felt they could operate it, but we have now gotten into it and I think we have gone over that several times.

In Wisconsin Lake, it was 2,000 miles which was the absolute heart of Soo Line. You cannot even classify it, really, as a regional. It is a trunk line.

Now, the Montana Rail Link, everybody said and we keep talking about selling it to Mr. Washington. It is my understanding that he is only buying the 200 miles of branch line. They are leasing him the 500 or 600 miles of main line. It is nothing in the world but just to circumvent their responsibility under the Railway Labor Act.

Now, Mr. Riley testified, and he has been a friend of mine for 25 years. Today I think is the first time I have ever been able to agree with him on one thing. He talked about the trackage in one of the proposed bills where they talk about 100 miles, and John said that it should not be a mileage criteria or base. I agree with that because the density and the traffic should have more control over that.

For example, it is only 98 miles from New York to Philadelphia. It is only 30 miles from Washington to Baltimore, yet there is a great, great deal of railroad traffic in those areas.

When he produced his charts and showed about all of these regional carriers, that the employees have increased, that is just absolutely inaccurate. When they started off with zero employees and increased to 50, yes, that was an increase; but when you check back there was formerly 120 that performed that operation 8 or 10 years ago. So we cannot agree with him on that.

In conclusion, I would like to make just one other comment. I know we have covered it. Bear in mind I picketed ICC a few weeks ago and put a wreath over there on the front door because some of our leaders of Congress said they have been brain dead for 4 years. However, I did it out of respect; I just planted a wreath.

Nevertheless, it is very, very difficult to get their attention.

You know, there is another thing that bothers me, and I have been in this business all my life. The way to make real money out

of a railroad today is to liquidate. That has been proven on the Rock Island and the Milwaukee.

Mr. Riley talked about Mr. Bill Brotsky who they brought in. I think his name has been mentioned several times. Mr. Bill Brotsky is going to operate the railroad. Well, I, too, know Mr. Bill Brotsky. They brought him in to liquidate the Milwaukee. He operated it about 18 months, and then it was liquidated. It went out.

So I think he has already proven how easy it is to liquidate a railroad.

Senator EXON. He is very good at it.

Mr. HARDIN. Well, we considered him an undertaker rather than an operator.

Mr. Chairman, we would just like to say in conclusion that we sincerely believe that you do have an interest in this, and I think this is only the beginning. If Burlington Northern does it for the southern lines, 2 weeks from now or 2 months from now they will be leasing out a paper sale to the northern lines and the western lines.

So I certainly would hope and pray that you will take a sincere interest in it and help us as much as you can.

Senator EXON. Thank you, Mr. Hardin.

Mr. Shell.

Mr. SHELL. My name is James D. Shell, and I am Vice President of the Brotherhood of Locomotive Engineers, representing the international president, Larry McFather. And I, too, appreciate the opportunity to come and talk to you.

We made our submission, which is going to be made, I understand, a part of the record, on the basis of short line sales in general and not specifically on the Montana Rail Link, so I would like to address my comments to that in general. However, at the end I would like to say something directly on Montana Rail Link from my own personal experiences.

There is something wrong with a system that lets us sell a section of main line railroad that is profitable, that is making a good return on its investment. We then turn this thing over to a non-union carrier, they walk away and have no obligation to sit down and bargain with the employees that are working on the line. Those employees could go out and watch trains run over that segment of track, and they do not have any right to the track, they do not have any right to the work. Their fathers and their forefathers before them worked on that railroad, and maybe they paid for it with their blood and their sweat and their tears. They have got just as much right, we think, to that work because that was their work and their railroad, and it is their seniority district. You and this body have just as much of an obligation to those people as you do to the stockholders that have a small pittance of dollars invested in that railroad, because this is not—this railroad and a lot of these railroads are not secondary, end of the line railroads, subject for abandonment.

What we are talking about here is a very viable piece of railroad, in particular on this one sale, but also on many sales in general. I think that this body has an obligation to see that these people have got the right to sit down and negotiate for their jobs, and their unions ought to have this right. If it is a high density, viable, prof-

itable piece of railroad, it should not be allowed to be sold without selling the contract, or at least provisions to sit down and make a negotiated package before the sale can go through.

There are two different issues before the body, and I think early in the program that was brought out. There is a difference between high density and low density. And Mr. Hardin made a very good point, that we do not object to the selling of a branch line or secondary line, at the end of the line, and I think even on those instances we would sure like to have the right to sit down and try to negotiate with the carrier and see if we could not make concessionary packages, or with the new buying carrier, if it is approved under the 7-day format. We do want the work. We think on these low density lines we can still make a package to give the people to work.

We do not think we should have to on high density, profitable line. Why should the railroads be able to walk away from labor agreements? Why should the railroads be able to sell a piece of profitable railroad just to fatten their economic wallets? That certainly was not the intention of Congress when they passed the Staggers Act.

You know we can sit down and bargain with these short lines because it has just happened on Montana Rail Link. There is a contingent agreement in place there. But why, that is a question I am asking this body, what mandates us. Why does the Interstate Commerce Commission, where do they get this authority to turn these sales over without a review, to see that labor does not get its fair share, or its due process.

Now, speaking specifically on Montana Rail Link, you said you were out there, Senator, and you had people come to you with great apprehension and were very upset, and I was the general chairman of the Burlington Northern until just recently, and I helped negotiate the contract that is in place, at least 90 percent of it, with Vice President Dean. So if you have any specific questions on Montana Rail Link, I think maybe I could at least direct you or try to answer some of the specific questions that may have come up, or some of the specific concerns, because I do at least have a little firsthand knowledge.

[The statement follows:]

STATEMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

My name is James D. Shell and I am a vice president of the Brotherhood of Locomotive Engineers, appearing here today on behalf of International President Larry D. McFather. Our organization represents about 28,000 engineers in the U.S. and Canada.

We welcome the opportunity to appear before this committee and express our concern over the growing trend among our larger railroads to engage in what amounts to a "fire sale" of thousands of miles of routes. This phenomenon has disturbing implications not only for rail labor, but for shippers dependent on rail service, for local communities facing economic damage, and for this country, because the rail system is the lifeblood of its heavy industry and agriculture.

When Congress passed the Staggers Deregulation Act in 1980, the BLE and other rail labor groups saw it as a commendable attempt to let the railroads compete effectively with other transport modes. Provisions in that act were designed to permit, even to encourage, larger carriers to sell off low-density, marginal or losing routes, if the alternative would be abandonment. Clearly, the loss of rail service could mean local and regional economic damage and reduced competition.

What we have seen lately is no less than a perversion of that good intent by an agency that delights in the fact that its decisions to expedite the "fire sale" are subject to very little review.

The Interstate Commerce Commission, for decades, took an evenhanded, unbiased approach to line sale transactions. It heard comment from all sides, evaluated data in depth, and then voted for the alternative that it found to be in the public interest.

Now, however, the ICC has a majority among its members who consistently and deliberately tilt decisions toward an anti-labor position, then virtually dare anyone to do anything about it.

There is a clear-cut campaign under way to help the holding companies and conglomerates who control our railroads to divest almost anything they can find a buyer for. This involves ignoring labor protection provisions that the ICC had imposed since the 1930's in line sales, mergers, consolidations, leases or grants of trackage rights.

The transfer of a deteriorating branch line to an entrepreneur in order to preserve service is not what we are talking about. With ICC encouragement, rail carriers and speculators have seized upon loopholes in the Interstate Commerce Act to facilitate the sale of 800, 900 even 2,000 miles of railroad at a time. The ICC has been more than willing to accommodate them, by rubber-stamping the sale in as little as seven days.

The proposed sale of a major Burlington Northern line to a newly-formed venture known as Montana Rail Link is typical of the aberrations that the ICC's policy has spawned. About 900 miles of heavy-duty, mainline railroad are involved. The line handles 16 to 18 through trains each day, and there are prospects of additional traffic.

The ICC has proven too willing to allow transactions of this magnitude, without any oversight or review, in one week. This position goes beyond even common sense, without getting into the legal technicalities.

Seven days is no time at all, if, of course, the agency really seeks to evaluate the long-term effects or the comments of interested parties in order to reach a fair decision.

In the Northeast, Guilford Transportation Industries in 1985 and 1986 stubbornly prolonged a labor dispute until it was ultimately resolved through Congressional intervention. Guilford has discovered that it can lease lines to its own subsidiary, the Springfield Terminal Company, and the ICC will quickly help to achieve what prolonging the strike failed to do: bust its collective bargaining agreements and its unions.

The leases have resulted in drastic cuts in employment levels; all employees are lumped into common rosters; job classifications are eliminated; and union members face discrimination and serious safety hazards. Guilford employees who choose to retain their union membership are given only the least desirable assignments and they have no recourse but to accept them, at greatly reduced wage rates.

Furthermore, dangerously unqualified management people are substituting for the veteran employees who have left in droves. The remaining union members are forced to take trains out and run against these unqualified managers, who have been pushed into jobs that require extensive training in addition to certain basic skills.

The Guilford management—which we like to call the Moamar Khadafy of the rail industry—has been allowed to thumb its nose not only at its labor agreements, but also at state and federal labor laws, the Railway Labor Act, the Interstate Commerce Act and the federal rail safety laws.

Is this what Congress intended when it passed the Staggers Act to preserve service and enhance competition?

Chairman Heather Gradison of the ICC says that these developments are an "unexpected but pleasant" result on the Commission's interpretation of the intent of the Congress in passing Staggers.

We come before you today to ask whether the results we have described are actually unexpected—certainly they are not pleasant.

Did the Congress intend to reshape our nation's rail system into a few huge carriers, augmented by a network of short line and regional operations? Did the Congress intend to allow the transactions that will create this two-tier system to go through in one week?

We do not believe that was the Congress's intent.

As the representative of the locomotive engineers who are the driving force of today's and tomorrow's railroads, we ask you to take a long hard look at this phenomenon. The courts have been very reluctant to grant any review of the ICC's ac-

tions. Congress, the creator of the Staggers Act, is our last resort, because without some action in Congress, this trend will run wild across our country.

The future of this new under-level railroad network is by no means guaranteed. Many of the spinoff lines require large loans, public subsidies and other special treatment to get started. An executive of the L.B. Foster Company, a financial backer of these sales, recently stated that seven (7) out of ten (10) of them can be expected to fail; two (2) will break even; and one (1) will make a profit. Are they really the great hope for preserving service that the large carriers and the ICC would have us believe?

We believe the Congress should take steps to see that these transactions receive adequate review. We believe the Congress should reassert its authority and reinstate debate about the future of the rail industry and the goals of national transportation policy.

This is far more than a "rail jobs" issue. The problem is not only the loss of good-paying railroad positions, because the spin-off line itself may fold. This affects the tax base and the overall employment picture, the very commercial lifeblood, of thousands of communities.

We urge the Congress declare that this trend has gone far enough, and to specifically instruct the Interstate Commerce Commission to live up to its responsibilities under the law, by passing the legislation that the Railway Labor Executives' Association has proposed.

Thank you.

Senator EXON. Well, I was going to ask you about that, Mr. Shell. I believe that there are some people in the room that were at that meeting that I attended. There were several objections, complaints, where people stood up at the microphone and said, Senator, this and this and this.

Some of the problems, previously, if you heard me, if you heard me talk about the one lady that was very much concerned with a son who was covered under the existing health benefits but would not be under the new one. I believe there was an engineer, although there were 300 people there, and I cannot remember for sure, who said that he did not have any real knowledge of what options and how long he had to make a determination of whether he went with the new Montana Rail Link or stayed with Burlington. That was a complaint.

At one time during the proceedings I said, well, now, there was a gentleman who got up and said I am an engineer, and this agreement, this sale is certainly not good for us. And I said, well, now, wait a minute. You are an engineer? Yes. Is it not true that your union has signed a contract with the Montana Link line? And about three or four people jumped up, and there was a general growling from the audience, and said yes, they have, but that was not us, that was them, and I guess they were talking about you, Mr. Shell, back in Washington, DC.

Then I said, then, what you are telling me is that the brothers, members of the brotherhood out here are not satisfied with what their brothers did back in Washington, and they were nearly unanimous, yeah, that's right.

If you have been around railroad labor people all your life, as I have, you could certainly feel the unhappiness that at least they felt.

So maybe you have not done a very good job, Mr. Shell, of selling the members of your brotherhood out there the contract that was entered into.

You must have thought it was a pretty good contract, or you would not have entered into it, is that right?

Mr. SHELL. Well, let me bring you up to date a little bit, Mr. Chairman. The Montana Rail Link came to the Brotherhood of Locomotive Engineers, and they said within this framework, within this basic concept, we are going to hire some people and we are going to run a railroad. If you are interested in representing, at the time they said all of the crafts, but eventually it became just the operating crafts, if you are interested in this package, fine. If you are not interested in this package, this will be a nonunion railroad, and we will go out and we will hire the people to run it. If we can get them off of the former Burlington Northern, that is fine.

In view of what we had to work with—you see, this goes back to my original testimony, why in the hell should we have to sit and watch them sell a piece of profitable railroad? But they have got that right. They did not have to come to us. We could not do anything until that railroad was set up, in operation, and then under the law we could have distributed A cards and went out to unionize a nonunion railroad.

Senator EXON. What you are saying, Mr. Shell, is that you did not have any option because had you done nothing, then your operating engineers would have had nothing, and at least now you have something. Is that right?

Mr. SHELL. We have got a contract in place under the Railway Labor Act, and when it expires, the next one will be negotiated under the Railway Labor Act, and hopefully it will be better than this one. And this one is better than no contract.

Senator EXON. If you were an engineer out there working on that line, you would not be happy with this either, but that is just the way the ball has bounced because, essentially, of the attitude of the majority of the ICC. Is that correct?

Mr. SHELL. That is true, and I have to agree with Mr. Dean that this, or Vice President Dean, that when you compare this contract to short line railroad contracts, it is a good short line railroad contract.

Senator EXON. Mr. Hardin?

Mr. HARDIN. Mr. Chairman, maybe I had better explain one little idiosyncrasy that seems to be occurring here. Those people out in Montana last weekend when you were out there who were unhappy and disenchanted with the agreement, they were UTU members, in all probability, like Mr. Raney.

Senator EXON. The UTU was very heavily involved there, I know that.

Mr. HARDIN. Walt, but you see, on all the Nation's railroads, the United States and Canada, the UTU represents the brakemen, conductors, switchmen, yard masters and all, and parts of the engineers, but everybody except the engineer, and the engineers on a good many roads. But Mr. Brotsky, incidentally—we will get back to Mr. Brotsky—we invited Mr. Brotsky here to come to Washington before the RLEA and explain to all of us together, you know, what he planned to do on the Montana Rail Link. He refused. He would not talk to anybody.

Burlington Northern has never talked to anybody, not a union official, or a member, or an employee, anybody.

But what they did out there and the reason that a lot of the people, well, 75 percent of the people are disenchanted, they did,

Mr. Brotsky and the gentleman in here today who said he did the negotiating, I think the attorney, they did make an agreement with the BLE to represent all the people who are going to operate the trains and the engines, and the UTU people who historically have had an agreement did not have any say-so about it. I think that was it.

So that is a little bit of difference. You know, they would have you think that they negotiated in good faith and they had a lot of compassion and, you know, they were real, real down to earth and going to give bonuses and all this and that, but that is just not exactly the way it turned out to be.

And then we do not know. We understand that they are requiring a no strike clause in the agreements that they are making. We do not know if that is accurate. We intend to find out whether it is or not.

Senator EXON. That is not true of yours, Mr. Shell?

Mr. SHELL. The agreement does not have a no strike clause in it. It had a lot of things in it that they wanted, like management right clauses, that aren't in there either, but I——

Mr. HARDIN. Well, I say, I hope it is not in there, but you know, we will find out pretty soon, I am sure.

Mr. SHELL. It is not in there.

Senator EXON. Gentlemen, I want to thank you very much for your testimony, and we appreciate it very much, and we are sorry that we tied you up as long as we did today, but we think this is an important matter, and we are proceeding as rapidly as we can.

With that in mind, I would like to excuse you.

Thank you.

I will call the next panel, railroad witnesses, Mr. Mortimer B. Fuller III, president and chief executive officer of the Genesee & Wyoming Industries, Inc.; Mr. Alan Fitzwater, vice president for government affairs for the Burlington Northern Railroad; and Mr. Wayne Serkland, senior vice president for administration and chief legal officer for the Soo Line out of Minneapolis.

Gentlemen, I apologize again as profusely as I can for tying you up for so long, and we appreciate your patience.

With that, unless you have some other line of testimony, I will recognize the first name on the list here, and that is Mr. Fuller.

Mr. Fuller.

STATEMENTS OF MORTIMER B. FULLER III, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GENESEE & WYOMING INDUSTRIES, INC.; ALAN M. FITZWATER, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, BURLINGTON NORTHERN RAILROAD CO.; AND WAYNE SERKLAND, SENIOR VICE PRESIDENT FOR ADMINISTRATION AND CHIEF LEGAL OFFICER, SOO LINE RAILROAD

Mr. FULLER. Thank you.

My name is Mort Fuller, and I appreciate the opportunity to address the subcommittee. I am president of Genesee & Wyoming Industries, a company which has been in the short line railroad business since the turn of the century and which has acquired a 100-mile segment of CSX in western New York operated as the Roches-

ter & Southern Railroad; and a 100-mile segment of Southern Pacific in Louisiana, operated as Louisiana & Delta Railroad.

I also serve on the executive committee of the Regional Railroads of America, an industry association whose objective is to have railroads treated equally to other businesses.

I have provided written testimony and would like to make a few comments in regard to that testimony.

First, I feel somewhat out of place today because I am not familiar with the Montana Rail Link-Burlington Northern transaction. However, I am concerned with the effect that any legislation resulting because of that transaction might have on the rest of the industry.

I would like to comment on three items. First of all, my testimony and experience and other data support the fact that short line and regional sales by Class I carriers work from an economic point of view. It is not a perfect process, but it has reversed traffic declines, and it has preserved both railroad and non-railroad employment. In one of our own specific situations, the Rochester & Southern, our employment has increased 21 percent since the day we began work, and that is not starting from a zero base.

Senator EXON. You said your employment has increased 21 percent since the day——

Mr. FULLER. Since the day we began operating the railroad.

Senator EXON. Twenty-one percent over what the railroad had previously?

Mr. FULLER. No, 21 percent over the employee group that we started to operate the railroad with.

Senator EXON. How does it compare, if I might ask, with the number of employees that you had, that the previous owners had on the same line?

Mr. FULLER. We probably started at about 60 percent of the level of employees that the previous owners had, due largely to operating with two and three man crews instead of four and five man crews.

Senator EXON. Those are the same basic figures, then, that Mr. Riley had on his chart, as I understood it.

Mr. FULLER. Right.

Senator EXON. I guess I misunderstood it. I am not saying that he was trying to fool me, but when he had his charts and figures up here, I assumed that the increase that he was showing was the increase of number total employment as opposed to what the road was before.

But you have stated it correctly so that I can understand it, and that is that you have increased employment from the point that you began.

How viable a figure is that? Are you saying that the 60 percent of total employment compared to what it was previously was what you felt you needed to run the road efficiently at that time.

Mr. FULLER. Correct.

Senator EXON. And because you have increased the traffic, you have therefore been able to hire more people than what you had originally intended, is that right?

Mr. FULLER. That is exactly the case.

Senator EXON. Thank you.

Mr. FULLER. Our traffic is up 25 percent.

This is an economic restructuring. We are trying to rebuild a rail network that has deteriorated over the years.

This restructuring is strengthening the competitiveness of the Nation's railroads. It has certainly been true in our own experience.

The second item I would like to comment on is the ICC process. From our point of view, it is not important whether the process is 7 days or 30 days. What is important is that the process be simple, that it be certain, and that it be quick. The risk of legislating change in that area is that added regulation will slow down or add uncertainty to this process.

The Rochester & Southern was done prior to the expedited exemption proceeding, and it took us 6 months to receive approval for the transaction. During that time there was significant deterioration on the rail line because the seller naturally did not want to invest any money in track maintenance pending the sale.

The third item I would like to touch on is the fact that the rail industry is treated differently than other industries in this country. Staggers deregulated the revenue side of the industry, and that has allowed us to maintain market share in our businesses where our principal competition is not other rail lines; it is trucks, it is barges, and it is imported commodities carried in foreign flag vessels.

The expense side of the industry, however, is still burdened by Federal laws and regulations which make railroads noncompetitive when compared to other transportation industries. These costs essentially discriminate against railroads by treating them differently than other transportation industries or other businesses in general, and one of these burdens is labor protection.

One can argue the social merits of whether or not labor protection should be provided in any particular instance. It has not been provided in any other industry.

The point I would like to make is that if the Congress wishes to provide protection, the rail industry should not be burdened with the cost of that protection. It is a declining industry. If there is going to be protection, it should be spread over all industry, and its costs should come from general funds, not from rail industry funds. There is precedent for such action with Conrail, the Rock Island and the Milwaukee. Otherwise I do not believe the industry can restructure successfully to continue to compete.

Thank you.

[The statement follows:]

STATEMENT OF MORTIMER B. FULLER III, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
GENESEE & WYOMING INDUSTRIES, INC.

My name is Mortimer B. Fuller III. I am President and Chief Executive Officer of Genesee & Wyoming Industries, Inc. (GWI). GWI is a holding company which, through its Genesee and Wyoming Railroad Company subsidiary, has been engaged in the small railroad business through continuity of ownership since its founding in 1899. Today the company owns and operates four railroads in New York and Louisiana and is in the process of starting a fifth.

I also serve as a member of the Executive Committee of the Regional Railroads of America, an industry association whose objective is to change that body of federal law that treats railroads differently than all other businesses in the country.

I appreciate the opportunity to address this Subcommittee. My comments will be directed to the economics of regional railroads, their viability and their impact on rail labor. My perspective is from the viewpoint of our railroads. Two of those, the Genesee & Wyoming and the Danville and Mount Morris, have operated as short lines since their construction in the 1800's. Two others, the Rochester & Southern and the Louisiana & Delta, are regionals recently acquired from CSX and Southern Pacific respectively. Using the Genesee & Wyoming as a base, a railroad which has operated successfully and profitably since its founding, our business since 1981 has consisted of rebuilding troubled rail properties. We began with two segments abandoned by Conrail under NERSA, and another whose principal shipper was caught in a severe cyclical downturn.

The premise on which our railroads and all other newly formed regionals is based is that the Class I railroads in this country are a declining industry facing serious economic problems. This premise is amply supported by statistics with which you are all familiar. A few worth mentioning are:

Despite being the only industry which has federally mandated labor protection, employment has declined 76 percent since 1951.

Employment on Class I railroads declined from 447,000 to 257,000 between 1980 and 1986.

Railroads' share of the intercity freight market measured in revenues has declined to 16.9 percent in 1985 from a 20.4 percent market share in 1980. In 1930 railroads' share of that market was 98 percent.

Railroad's return on investment is substantially less than their cost of capital. As an industry, their return on equity is below that of all 25 industries ranked by the Fortune 500.

As would any industry that faced these facts, the railroad industry is undergoing significant restructuring. Class I railroads are by necessity ridding themselves of light density, money-losing lines.

Prior to the Staggers Act of 1980, the major tool available for this restructuring was abandonment. Since Staggers, the formation of regional railroads has become a substitute for abandonment, and the advantages are significant.

By substituting a lower cost, local operation which is close to and dependent on its customers on branches that were marginally economical to the Class I, regionals reduce the overall cost of rail freight, stimulate demand and allow the Class I to keep and build the traffic density in its core system where it can be handled most efficiently. The concept is similar to the commuter airline-trunk airline relationship—an industry which, parenthetically, restructured without federally mandated labor protection.

Does it work? Our experience to date indicates it does:

In its first year of operation, Rochester & Southern's revenue carloads increased 24.6 percent over the prior year when the railroad was operated by CSX.

Immediately upon starting operations, Louisiana & Delta was able to recapture through a freight contract business from a major shipper lost six months earlier. That business accounted for 20 percent of Southern Pacific's carloadings on the lines acquired by L&D.

Both regionals are operating within their budgeted guidelines.

If you were to survey our customers which you are welcome to do, I think you would find that rail service has improved in every instance.

The critics of this process claim that the new regional railroads employ fewer people than the old Class I owner employed on the line. While that is true in most cases, it misses the point completely. An abandoned line employees no one, and the vast majority of these lines were on the path to abandonment.

Further, the abandonment of a rail line not only affects rail workers, it affects all those employees working for industries served by the line.

Equally important, the evidence to date suggests that regional railroads have the potential for significant growth. My own railroad is a case in point.

Because of increased business, employment on the Rochester & Southern has increased 21 percent since it began operations 14 months ago.

Our railroads operate with levels of employment ranging from 60 percent to 75 percent of the labor force existing prior to takeover, a far higher proportion of jobs saved than would have existed had the lines been abandoned as they were destined to be.

The customers of the Rochester & Southern employ over 83,000 people and all but one are dependent on the R&S for rail service. The decline in rail service was affecting their competitiveness. Loss of rail service would have had a major impact on employment far beyond the rail-related jobs.

And what about the quality of these jobs? Are regionals substituting low paying jobs for good paying ones, and non-union jobs for union jobs?

Our base wage rates average 80 to 85 percent of the base hourly Class I rates. However, with average annual earnings in 1985 of \$46,000 including fringe benefits, railroad workers are among the best paid in U.S. industry, earning 45 percent more than the average manufacturing employee and 85 percent more than the average in domestic private industry.

Our base wage rates are higher than the local averages where we operate, and higher than the average for all manufacturing jobs.

Without advertising or publicity, Louisiana & Delta received over 200 resumes and applications for less than 30 positions, an indication of the attractiveness of railroad employment to the job market as a whole.

We pay incentive bonuses for increases in business. For the first year of operation, Rochester & Southern paid \$1,465 to each hourly employee because of improved business.

Almost all of our employees were previously employed by the selling carrier on the lines we purchased. Except in one instance where prospective employees requested to be non-union, our regional railroad employees have union representation.

While there are good reasons to be optimistic about the prospects for railroad restructuring, it would be well to keep in mind the fragile nature of these new businesses.

Regional railroads are assuming the operation of marginal or money-losing lines. They are by necessity taking on a large amount of debt to purchase the assets. Those assets are generally in need of significant rehabilitation.

The new owners are betting that through a combination of productivity and improved local service they can earn enough to service their debt, rehabilitate their line and turn what was a money loser into a money maker. It is a risky proposition.

Special federal laws mandating railroad retirement programs, requiring participation in a unique workers' compensation program, allowing secondary picketing and imposing "labor protection" costs—all these add to the cost of doing business thus increasing the risk involved.

If someone approached this Congress with a program that would help restructure an ailing industry in a manner which preserved jobs and service that might otherwise be lost, I suspect it would meet with hearty enthusiasm. Before our current deficit problem, it may have even received funding support.

Regional railroads are just such a concept. Those of us who run them are not asking for funding. We are not even asking for special treatment.

We are asking for equal treatment. We are asking to be governed by the same laws that govern every other business in the country.

Providing that kind of equity increases our chances to remain a viable alternative to rail line abandonment.

Senator EXON. Thank you, Mr. Fuller.

Mr. Fitzwater.

Mr. FITZWATER. Thank you, Mr. Chairman.

I am Alan Fitzwater. I am vice president for government affairs for Burlington Northern Railroad. I appreciate the opportunity to testify on the growth and success of the short line and regional railroad industry.

One thing I would like to point out at the outset is that this is about ten hours of hearings now that I have sat through on this subject—about 5 hours over in the House and now about the same here—and it is interesting to note that there has not been a single shipper witness coming in and complaining about the process. The process up to this point has been complained about primarily by the labor unions. There has not been a single shipper complaint registered to my knowledge in any of the hearings.

My prepared text and prior testimony by other witnesses this morning cover in detail the three topics I would like to summarize. The topics are the rationale for rail sales by the Burlington Northern, the labor protection issue, and the ICC's exemption authority.

Rather than cover the Montana Rail Link transaction in detail, I would like to defer to your questions on that subject.

The transportation industry is intensely competitive. Trucks continue to capture market share from the railroads. This competition has prevented the Burlington Northern from increasing the rates we charge our customers. At the same time, we need to continue to invest in our track and equipment while trying to earn an adequate return for our investors.

In order to be effective competitors, we have had to cut costs aggressively. One of the many ways that we have been able to do this is through restructuring of our rail system. In the past, restructuring meant primarily one thing, the abandonment of unprofitable and marginal lines. Everyone lost in this process. The employees lost their jobs, shippers lost their service, and the railroad lost the business.

Today, restructuring has taken on a new meaning, namely, the sale of marginal lines to local and regional carriers. Since our line sale program was initiated, abandonments have decreased in our system from a peak of over 1,100 miles in 1985 to a mere 168 miles this year. On the other hand, we are now selling at a rate of about 1,000 miles of track to new operators each year.

Line sales allow us both to reduce our costs and to preserve and expand our traffic base, which in effect feeds our main line system. In total, we have completed eight transactions involving 2,600 miles of our system, which represents almost 10 percent of our system. We expect to sell three more by the end of this year. The lines have varied in size from about 52 miles for the smallest to about 900 miles for the largest which is the Montana Rail Link transaction.

I want to emphasize that our line sale program concentrates on marginal lines with either declining business or severe competitive pressures. In both situations it is often only a matter of time until abandonment is the only remaining option. A good short line and regional operator can make a marginal line a profitable one because of better operating economics, improved service and effective local marketing.

Preservation of rail lines has created a winning situation for everyone involved. The eventual abandonment is avoided, the lines feed traffic to Burlington Northern, shippers keep service, and the long term jobs are preserved.

The Commission's decision not to impose labor protection is a pivotal factor in the success of these line sales. In fact, the dramatic increase in our line sale program and decrease in abandonments coincides exactly with the Commission's decision in the same year, 1985, not to impose automatically labor protection in these sales. In each case, our willingness to sell the line and the interests of the entrepreneur to operate the new service turned on whether the proposed transaction would be economically feasible. The simple fact is that the enormous cost of labor protection, whether imposed on the buyer or on us, would have rendered most of these sales economically infeasible, and the abandonment of the lines certain.

Furthermore, there is no justification for singling out railroad employees for job protection, especially when unemployment compensation is available to them. All Americans have had to make

adjustments as we shift from a smokestack economy to a service oriented one, and as foreign competition has been introduced in the country. Employees in the steel industry, the automobile industry, the coal industry and agricultural industry have experienced severe dislocations as a result of sales, mergers and plant closures. None of these dislocated employees have received the type of job protection that the rail labor unions feel that they are entitled to, that is, 6 years' protection.

Earlier witnesses have commented on the several pieces of legislation that have been introduced in the Senate and the House, which would affect the ability of the Commission to exempt line sales and other transactions under Section 10505 and would place a moratorium or a limitation on specific lines which could be sold. Burlington Northern opposes this legislation as unnecessary, since the ICC has taken steps to remedy the concerns the legislation was drafted to deal with.

The exemption procedure offers flexibility and remedies, if necessary. For example, the Commission can, as it did most recently with the Wisconsin Central exemption petition, stay the effective date of the exemption if it appears that public comment is required.

The Commission can also revoke an exemption at any time, if it appears the transaction is contrary to transportation policy, or is an abuse of market power. In fact, since a revocation proceeding can be instituted at any point, even after startup of a new company, this procedure provides a continuing remedy that is not available, if the transaction gains the full approval through the formal application process.

If the committee decides that present exemption procedures must be modified, then we would recommend that this be accomplished through the ICC rulemaking, rather than legislation. We also would recommend that the present procedure be retained for transactions, which would result in the formation of railroads smaller than Class IIs, and that the procedure be modified for larger transactions in a way that ensures resolution in an expeditious and a predictable timeframe.

With that, Mr. Chairman, I would like to turn it over to the remaining witness, so we can use the remaining time for questioning. [The statement follows:]

STATEMENT OF ALAN M. FITZWATER, VICE PRESIDENT FOR GOVERNMENT AFFAIRS,
BURLINGTON NORTHERN RAILROAD COMPANY

Mr. Chairman and members of the Subcommittee, I am Alan M. Fitzwater, Vice President of Government Affairs for Burlington Northern Railroad Company. I appreciate the opportunity to testify on the growth and success of the short line and regional railroad industry. The growth in this industry has been extremely beneficial to all parties concerned. Accordingly, I urge the Subcommittee not to take any legislative action that would stem this growth.

RAIL LINE SALES

The transportation industry is intensely competitive. Trucks continue to capture market share from the railroads. This competition has prevented the Burlington Northern from increasing the rates we charge our shippers. At the same time, we need to continue to invest in our track and equipment, while trying to earn an adequate return for our investors. In order to be effective competitors, we have had to cut costs aggressively. One of the many ways we have been able to do this is

through the restructuring of our rail system. In the past, restructuring meant primarily one thing—the abandonment of unprofitable rail lines. Everyone lost in the process: the employees lost jobs, the shippers lost their service, and the railroads lost their business. Today, restructuring has taken on new meaning; namely, the sale of marginal rail lines to local and regional operators. Since our line sale program was initiated, abandonments have decreased dramatically from a peak of 1,104 miles in 1985 to 168 miles this year. This trend is illustrated in an attachment to my testimony. It is a trend we expect to continue in the future. Line sales now allow us both to reduce our costs and to preserve and expand the traffic on the lines, which feeds into our mainline system.

So far, we have completed eight separate line sales involving 2,647 miles of track. We expect to sell three more lines by the end of the year. The individual lines have varied in size from 52 miles for the smallest to approximately 900 miles for the largest.

Our line sale program concentrates on marginal lines with either declining business or severe competitive pressures. In both situations, it is often only a matter of time until abandonment is the only remaining option. A good short line or regional operator can make a marginal line a profitable one because of better operating economies, improved service, and effective local marketing.

Reduced labor costs account for the greatest operating savings on new short line and regional railroads. These reduced costs result from smaller crew sizes and more flexible work rules. As an aside, I would note that this does not necessarily mean that these new railroads are non-union. In fact, many of the new regional railroads have union contracts. However, these contracts eliminate most of the archaic provisions of the national agreements to which the large railroads like the Burlington Northern are party. On both short line and regional railroads, employees work a full day for a full day's pay, without craft distinctions, and without arbitraries or special allowances. The number of crew members is commensurate with the actual amount of work there is to do.

Short line and regional railroads also offer more flexible service to shippers and often lower rates. They can afford to spend more time with one customer and strive to meet their special needs. Moreover, the railroads are locally based and know their customers personally. Local marketing efforts are more effective as a result.

To help illustrate these points, I would like to cite a specific example—the sale last year of 344 miles of rail line between Pasco Junction and Cle Elum, Washington to the Washington Central Railroad. Burlington Northern's market share had declined due to stiff truck and rail competition, and our traffic levels had fallen sharply when we put the line up for sale. Today, the Washington Central is transporting more traffic and with fewer employees. It operates its trains with two-person crews and without traditional work rules and cabooses. At the same time, it offers its employees a profit sharing program, incentive bonuses, and a "cafeteria plan," which includes such things as child-care assistance and additional health care benefits. It has created a new marketing program, where every employee is assigned marketing responsibility for specific shippers. Its innovative marketing approach has resulted in new short distance movements of commodities, such as empty cans and empty apple crates, which never before were carried by rail. Nick Temple, President of the new railroad, says it is truck competitive for distances as short as two city blocks. As a result, the railroad has increased car loadings of interline traditional traffic from 16,000 annually to 17,500 and added short distance intraline traffic of 1,500 car loadings where none existed. Together, these car loadings represent a 20 percent increase in just one year. This increase in traffic translates not only into greater job security for those employees who may have been facing layoffs if the line had to be abandoned by Burlington Northern, but improved service to shippers.

Burlington Northern wants the new railroads spun off from our system to succeed. The traffic they preserve and generate also benefits us. To help in this regard, we have entered into agreements with the new railroads to cover freight equipment, billing and accounting services, and basic rate structures. These agreements offer stability to both the new railroads and their shippers. The agreements also enable shippers to negotiate rates for through service with the originating railroad, without the need to enter into separate agreements with connecting carriers.

Preservation of the rail line in Washington and others like it have created a winning situation for everyone involved. The eventual abandonment of the lines is avoided; the lines continue to feed traffic to the Burlington Northern; shippers keep rail service; jobs are preserved and in some instances created; and local communities suffer no economic dislocations.

The dramatic increase in the sale of marginal rail lines by the Burlington Northern and the other large railroads is clearly tied to the economics of the transaction.

The economics of these sales make sense: maintaining the line by Burlington Northern is uneconomic while its purchase and operation by a small operator is cost effective.

The sale of these lines to maintain service has been facilitated by the Interstate Commerce Commission's (Commission) use of its statutory discretion not to impose labor protection. Section 10901 of Title 49 of the United States Code provides that in order for a new operator to acquire and operate a rail line the Commission must determine that this is required or permitted by the public convenience and necessity. This same provision grants the Commission discretion to decide whether to impose labor protection on such acquisitions. In 1982, the Commission began exercising this discretion on a case-by-case basis. In 1985, it exempted these line sales under Section 10505 on a class basis from all regulation. Section 10505 of Title 49 requires the Commission to exempt transactions from regulation when regulation is unnecessary to implement the rail transportation policy, and the transaction either is of limited scope or will not result in the abuse of market power.

LABOR PROTECTION

The Commission's decision not to impose labor protection is a pivotal factor in the success of line sales. In fact, the dramatic increase in our line sales and decrease in abandonments after 1985 coincides with the Commission's decision the same year not to impose automatic labor protection in line sales. In each case, our willingness to sell the line and the interest of the entrepreneur to operate the new service turned on whether the proposed transaction would be economically feasible. The simple fact is that the enormous cost of labor protection, whether imposed on the buyer or us, would have rendered most of these sales economically infeasible and the abandonment of the lines certain.

In the hearing today, I expect representatives of rail labor to renew their request for legislation to require the Commission to impose labor protection on sales of lines to new rail operators. This labor protection would require negotiations over crew sizes and work rules and the payment of up to six years of full wages and benefits for any employee who loses his or her job or is "bumped" into a lower-paying position as a result of the sale. This is the same protection the Commission is required to impose on rail carriers in other types of transactions. In addition, there may be testimony on H.R. 3332, a bill recently introduced in the House of Representatives by Congressman Walgren of Pennsylvania. This bill appears to require negotiations over crew sizes and work rules, but would cap the wage and benefit payments of \$30,000. If either of these legislative measures were enacted, they would bring to a halt most line sales. We cannot believe such a result would serve anyone's best interest, including that of rail employees. We strongly oppose both proposals.

Absent the imposition of labor protection, we have been able in the last few years to reduce our costs through line sales rather than abandonments. At the time of sale, these lines, while marginal, still support valuable traffic and jobs. This means that, in contrast to abandonments, the physical plant usually is in good condition, the needs of the shipping community can be met, and the opportunities for our employees to become employees of the acquiring railroad is greatly enhanced.

These legislative measures would take what is now a real success story for employees, railroads, and shippers and turn it into a situation where we once again are forced to abandon lines and where once again jobs are lost; competitive choices for shippers are reduced or eliminated, and the growth of short line and regional railroads is stunted.

If, on the other hand, Congress wants to encourage the growth of short line and regional railroads, and at the same time provide the opportunity for large railroads to improve their efficiency and reduce their costs, then Congress should pass legislation to eliminate the requirement for labor protection in all line sales, not just those to new operators, and in other transactions subject to the Commission's jurisdiction as well.

Railroads are the only business in the United States now required by federal statute to pay labor protection to their employees when they sell, merge, or abandon their properties. Labor protection is provided on top of what an employee is entitled to be paid under Railroad Unemployment, which runs from 26 to 52 weeks in duration. The cost of statutorily imposed labor protection and unemployment insurance for Burlington Northern and the industry as a whole is enormous. In fact, the annual cost of labor protection alone for the rail industry is approximately \$350 million. The cost of labor protection and unemployment insurance combined is well over \$500 million—equivalent to over 30 percent of the industry's pretax net revenue from rail operations. These are costs that the rail industry can ill afford to pay.

Moreover, these are costs that are not imposed by statute on either of our major competitors—the trucking and barge industries—or on any other U.S. industries.

Furthermore, there is no justification for singling out railroad employees for job protection, especially when unemployment compensation is available to them. All of America has had to make adjustments as we have shifted from a smokestack economy to a service-oriented one and as foreign competition has been introduced in the country. Employees in the steel industry, the automobile industry, the coal industry, and the agricultural industry have experienced severe dislocations as a result of sales, mergers, and plant closings. None of these dislocated employees have received six years of job protection from their employers pursuant to federal statute.

EXEMPTION PROCEDURE

Several pieces of legislation have been introduced in the Senate and House which would affect the ability of the Commission to exempt line sales and other transactions under Section 10505 and would place a moratorium or limitation on specific lines which can be sold. Burlington Northern opposes this legislation, as it would prevent transactions which are prudent in terms of continued rail service and employment opportunities.

The Commission granted the class exemption for line sales because it clearly met the statutory criteria established in Section 10505. In its decision, the Commission also noted that the vast majority of interested parties supported the exemption because it “would expedite and reduce the costs of entry, help maintain service, and eliminate any uncertainty in negotiations with potential purchasers.” In this regard, I would emphasize again that we are dealing here primarily with marginal rail lines. Unnecessary costs and delays may make it difficult, if not impossible, for some new rail operators to obtain and to hold onto financing commitments for the lines.

The use of the exemption procedure has become increasingly controversial as a result of a few recent proposals to establish new regional railroads. One of these proposals is our sale to Montana Rail Link involving 578 miles of mainline and 326 miles of branch lines. The protestants, primarily labor unions but also some state government authorities, contend that transactions of this magnitude were not contemplated when the exemption procedure was adopted. This simply is not the case.

Size is not and should not be the controlling factor when determining if the exemption procedure is appropriate. The exemption criteria specified by statute do not require a transaction to be of limited scope, if it does not pose any threat to abuse of market power. In many of these transactions there is significant shipper support, which is a good indication that the sale does not create a competitive problem.

This is particularly true with respect to our sale to Montana Rail Link. All of the branch lines have light traffic and are good candidates for abandonment. However, hopefully, with reduced costs and improved marketing, the traffic base can be restored. The mainline is one of three Burlington Northern operates in Montana serving east-west traffic. While there is no immediate threat of abandoning the mainline, it is clear that we must reduce our costs significantly if we are to compete for the traffic necessary to support our current system. Montana Rail Link should be able to restore the local traffic base and provide the Burlington Northern with a low cost east-west route. The safeguards built into the transaction ensure that the public interest is protected and no abuse of market power will result.

One additional aspect of H.R. 3332 emasculates the Commission's exemption authority, and would jeopardize future line sales by requiring the procedures of the Railway Labor Act to govern any labor arrangement made as part of a sale. If the lengthy procedures of the Railway Labor Act need to be exhausted in order to achieve agreement on the transaction, financing will be difficult, if not impossible, to obtain. Further a debilitating strike on a line of marginal quality would likely result in the loss of traffic, reducing the attractiveness of the purchase to the buyer and resulting in a loss of jobs.

The creation of regional railroads should be encouraged, not discouraged. A report released in July as part of an ongoing North Dakota Rail Services Planning Study analyzes the cost and profitability of operating light density branch lines as short lines. Specifically, it evaluates the potential economics to be gained from operating a single 81-mile Burlington Northern branch line versus a set of branch lines—one at 667 miles and the other at 211 miles—as independent short line systems. The results of the evaluation suggest that the two sets of branch lines would operate more profitably than a single line due to traffic density and size. While this may not be the result in the case of all branch lines, it at least suggests that there may be instances when the best way to ensure the long-term operation of branch lines is to

group them together into a larger network. In fact, this appears to be what the Soo Line did in its sale of 2,000 miles of light density lines to the Wisconsin Central. The point is that neither the Commission nor the Congress should discourage the creation of these profitable light density rail networks made possible by the use of the exemption procedure.

Finally, the exemption procedure offers flexibility and remedies if necessary. For example, the Commission can, as it did recently to the Wisconsin Central exemption petition, stay the effective date of the exemption if it appears that public comment is desirable. The Commission also can revoke an exemption at any time if it appears that the transaction is contrary to rail transportation policy or is an abuse of market power or to protect the interests of employees. In fact, since a revocation proceeding can be instituted at any point (even after start up of the new company), this procedure provides a continuing remedy that is not available if the transaction gains final approval through the formal application process. If the Committee decides that the present exemption procedure must be modified, we would recommend that this be accomplished through Commission rulemaking rather than legislation. In this regard, we would note that on October 2, 1987, the Commission requested public comments on modifications to the exemption procedure. Furthermore, we would recommend that the present procedure be retained for transactions which would result in the formation of a Class III railroad (one that earns less than \$17 million in revenues) and that the procedure be modified for other transactions in a way that ensures resolution within an expeditious and predictable time frame.

CONCLUSION

The dramatic growth in the short line and regional railroad industry represents a true success story. The new railroads have preserved service for shippers, jobs for employees, commerce for communities, and traffic for large railroads. The growth in this industry would not have happened were it not for the Commission's decision not to impose labor protection in the sales of lines to new railroads. The simple fact is that the enormous cost of labor protection would have rendered most sales economically infeasible. The Commission's decision to exempt line sales from lengthy and unnecessary hearing procedures also encouraged the growth in this industry. We urge the Subcommittee not to take any legislative action that would stem this growth. If, on the other hand, you want to encourage the creation of new railroads, and at the same time provide the opportunity for large railroads to improve their efficiency and reduce their costs, then we recommend you approve legislation to eliminate labor protection from all railroad transactions subject to the Committee.

SUMMARY OF BURLINGTON NORTHERN'S ABANDONMENT AND LINE SALE PROGRAMS

	Abandonment program	Lines abandoned per year	
		Number	Mileage
Year:			
1980		18	418
1981		32	661
1982		29	620
1983		39	800
1984		61	762
1985		46	1,104
1986		13	157
1987*		8	168
Total		246	4,690

As of September 22, 1987.

	Line sale program	Line sales per year	
		Number	Mileage
Year:			
1986		4	690
1987		4	1,957
Total		8	2,647

Senator EXON. Thank you very much, Mr. Fitzwater. We appreciate it. Mr. Serkland?

Mr. SERKLAND. Thank you, Mr. Chairman. I am the senior vice president and chief legal counsel for the Soo Line Railroad.

And I was, for the last 6 months, intimately involved in a short line sale. And I thought I would just give you, from the Soo Line standpoint, how the ICC's regulation policy has impacted on the possibility of accomplishing such sales.

First let me also thank many, many people here in Washington, and many in the Midwest, that worked very hard and were very supportive of the Soo Line's line sale. Our line sale began after we acquired about 2½ years ago the assets of the bankrupt Milwaukee Road.

Those acquisitions required a very significant debt increase on the Soo Line Railroad. There were projections made as to the Soo Line's ability to repay those debts, which were based on the assumption that the economy in the Midwest would stay essentially the same as it was, and that there would be moderate improvement in the Soo Line's revenues.

Unfortunately, these projections were not realized on the Soo Line. And based primarily upon the depressed agricultural economy in the Midwest, and upon the pressures of deregulation, which impacted very severely on Soo Line revenues, business volumes declined and revenues declined on the Soo Line over the past 2 years.

As a result, the Soo Line was not generating the income from its operations necessary to make the principal payments on its debt obligations. By late 1985, it was clear that costs on the Soo Line would have to be pared substantially.

Our first attempt to accomplish that was by reducing employment and very aggressively looking at all of our lines to see which were the least profitable, and which might be a subject of a line sale.

In late 1986, it became apparent that our position in our Lake States, what was then called our Lake States Operating Division, could not be operated at a reasonable rate of return under the Class I labor agreements that existed on that property.

In order to generate the cash to repay debts, we determined at that time to make a line sale. We did this rather than go through a process which would have been traditional in the railroad industry, I think.

When faced with financial pressure, that process has been to reduce maintenance on a line of railroad, reduce service, because you simply cannot afford the maintenance and the service, and to allow a spiral to begin, which ultimately leads to abandonment or at least a very makeshift operation which suits no one very adequately.

We saw the line sale as an opportunity to avoid that spiral, and recover a substantial portion of our investment by turning the line over to someone who could operate it in a profitable fashion.

This strategy only became possible because of the ICC's policy of minimizing the regulatory barriers which had previously existed to such line sales.

The economics of a major sale, such as the Soo Line's Lake States property I do not believe could withstand the extended review of a major traditional line sale between railroad companies.

It also could not withstand the imposition of labor protection payments. And even more critically, it could not withstand a requirement by the ICC that the labor agreements existing on the selling railroad be imposed on the acquiring railroad.

There has been some discussion about the stay, which was imposed upon the Soo Line transaction by the Interstate Commerce Commission. And I believe that, actually an approximate 35-day time period from the application to the conclusion of the Soo Line matter was not inordinately long.

The time was perhaps appropriate. What was inappropriate was that we had no indication at the beginning of the process that it would not be a 7-day period, as was provided for in the Commission's regulations.

We believed that the transaction complied with all of the rules included in those regulations, and would therefore go through on that process. This unexpected delay had a significant adverse impact on the potential buyer of our property.

Fortunately, that buyer was well-financed at that time already with their equity investors who were their initial investors, and were able to withstand the delay. How much more delay they could have withstood is the problem.

I think it is certainty that is most important for that acquirer to have. Because he can time things, he can time his expenditures, and he can see that he is in a position to close at a certain time. It is the unknown that gets in the way.

We believe that the public interest was well served by a regulatory framework, which enabled us to sell a significant portion of our system in a manner that allowed us to reduce our debt burden, make the Soo Line stronger and better able to carry on its service to its shippers, and in a fashion which will, we believe, strengthen rail service in the States of Wisconsin and Michigan.

In summary, the Soo Line would not object to a reasonable extension of the ICC review period for some line sale transactions, so long as the length of that review period of known to the parties in advance.

However, we would oppose the imposition of mandatory labor protection payments as a requirement to such line sales, or the imposition of labor agreements from one carrier automatically to the acquiring carrier, simply because we believe that would, in effect, destroy the line sale phenomenon that we are hearing about, and which we believe is a very positive influence in today's railroad climate.

I would be happy to answer any questions which you may have.
[The statement follows:]

STATEMENT OF WAYNE SERKLAND, GENERAL COUNSEL, SOO LINE RAILROAD

Mr. Chairman, my name is Wayne C. Serkland and I am the Senior Vice President, Administration and Chief Legal Officer of the Soo Line Railroad. My purpose

in being here today is to provide information concerning our sale of a portion of the Soo Line Railroad to the Wisconsin Central Ltd. For ease of reference, I will refer to the package of track and trackage rights which we sold as "Lake States" a name which we gave to that division of the Soo Line Railroad many months ago. The Lake States sale involved approximately 2,000 miles of railroad and trackage rights, the majority of which was located in Wisconsin and Upper Michigan with smaller portions in Minnesota and Illinois. In addition to the track, the sale included all of the facilities such as yards and shops associated with the rail operation in the sale territory so that, with the exception of locomotive power which was acquired principally from other sources, Wisconsin Central acquired a fully operational railroad.

Historically, the Soo Line has operated as one of the major rail links between the United States and Canada. It also has been a major supplier of rail services to the states of North Dakota, Minnesota and Wisconsin. In February 1985 the Soo acquired what remained of the Milwaukee Road following its restructuring during a lengthy bankruptcy proceeding. The acquisition enabled Soo to extend its reach to Kansas City and Louisville and brought added customers, factors necessary to remain competitive. However, the projections upon which we based the decision to acquire the Milwaukee Road included the assumption that the railroad business climate in the territory would improve moderately, providing the revenues to meet the substantial debt burden which accompanied the acquisition. Unfortunately, these projections were not realized as a result of two factors. First, the economy in our region, which is based primarily upon agriculture, experienced a continuing recession. Secondly, and perhaps more importantly, the competitive impact of deregulation was felt dramatically during 1985 and 1986. At the Soo Line, both revenues and volume declined. As a result, we were not generating the income necessary to make principal payments on the new obligations imposed by the Milwaukee merger.

By late 1985, it was clear that costs would have to be pared substantially. Reductions in personnel and increased operating efficiencies were undertaken to better balance the workforce to reduced business and revenues. Let me note that while much attention has been focused on union job losses, a much larger number of management positions have been eliminated. In addition, the level of service on all marginally profitable lines was carefully evaluated. Much of the Soo trackage in Wisconsin and Upper Michigan was in this category, in part because the paper industry, which traditionally was a high volume rail shipper, has switched from rail to truck transportation. For example, in a submission to the ICC, Wisconsin Central stated that it estimated it would have 145,000 car movements annually on the former Lake States track, averaging only approximately 74 carloads per route mile of track, compared with the 1985 overall industry average of 185.

In order to concentrate management and employee attention on lowering costs and building business on these lines, we set up a separate division within the corporation, the Lake States Transportation Division. A dedicated team of Soo employees worked diligently to turn the situation around during 1986, but, unfortunately, negotiations with the unions to reduce labor costs in line with the revenues of the division were unsuccessful. It became apparent that Lake States could not be operated at a reasonable return under existing Class I labor agreements and that a sale of the Lake States Division was the only alternative left to the Soo. A sale would solve several major problems. First, it would preserve rail service to the many communities then served by Lake States. Secondly, unlike the other alternatives—reduced maintenance and deteriorating facilities, or outright abandonment—the sale would save the great majority of jobs within the Division. Finally, it would also provide the Soo with a much needed injection of capital to be used to reduce its debt burden.

After reviewing a number of purchase proposals, the Soo decided to sell Lake States to the Wisconsin Central Ltd. (WCL). The final choice of a purchaser was based upon many considerations. WCL investors and management knew the territory from previous experience with other railroads in the region. The investors had made substantial personal financial commitments to the project. In short we were, and continue to be, convinced that the WCL team had the ability, commitment and the financial backing to operate the Lake States division successfully for the foreseeable future.

Of course, this strategy was possible only because of the Interstate Commerce Commission's policy of minimizing the regulatory barriers to such a transaction. The economics of a deal such as the Lake States sale cannot withstand the extended review period and labor protection payments that accompanies traditional rail mergers.

Another key element of the ICC line sale procedure is the refusal of the Commission to become involved in the process of establishing a work force which is integral to the formation of a new carrier such as WCL. In particular, the Commission has

not required new carriers to negotiate implementing agreements with labor prior to approving the sale. In our case, the new railroad began operations with at least 300 fewer on-line employees than we had utilized in the Lake States Division. Although I am not completely familiar with all of WCL's labor arrangements, I do know that the new railroad is operating without the many work rule restrictions that applied to the operation of Lake States. A major consideration in the formation of any of the new smaller railroads is the ability to operate with a leaner, more efficient workforce. An automatic imposition of the selling railroad's labor contracts upon the new company would have doomed many, if not all, of the more than 100 railroads which have been formed since 1980. I have little doubt that we would not have been able to consummate the Lake States sale had a purchaser been saddled with our existing labor contracts.

In our case, job protection was, of course, a factor from labor's standpoint, but it was not a consideration of the magnitude which one might expect given the size of the sale. All but approximately 260 of the active Lake States employees have job protection under the terms of the labor agreements which were negotiated in conjunction with the merger of the Soo Line and the Milwaukee Road. Some of the employees who did not join Wisconsin Central Ltd. will be required to move to other locations in order to retain their job protection. On the other hand, I believe that if Wisconsin Central Limited can operate without restrictive work rules, this flexibility will enable the new railroad to compete effectively with other modes of transportation and to recapture business lost in recent years to trucks. There is no reason, for example, that a leaner more efficient railroad cannot become once again the dominant mode of transportation for the paper industry in Wisconsin. If this happens, rail employment at WCL should grow.

There has been much discussion about the stay which was imposed upon our transaction by the Interstate Commerce Commission and I would like to take a moment to give you our views on that point. Frankly, we are of the opinion that the approximately 35 day period during which the Commission reviewed this transaction was appropriate. Our problem was the lack of notice of the extended study period. We believed that the terms of the transaction met all of the criteria previously established by the ICC for the seven day procedure. Judging from comments made at Congressional hearings and filed with the Commission, others in the legislative branch agreed that our transaction met those criteria. This unexpected delay had a major financial impact on both WCL and Soo. In testimony filed with the ICC, WCL estimated that between September 10th, when the stay went into effect, until September 30th it incurred additional costs of \$1 million. The expense to the Soo Line was estimated at \$27,000 per day on foregone interest savings. In addition, WCL testified that its insurance commitments would have expired during the term of the ICC's original stay order and that obtaining sufficient replacement insurance commitments were uncertain. Also, these "insurance commitments" are a condition to all of WCL's loan agreements. Completion of the sale enabled Soo to greatly improve its financial position.

We believe that the public interest was well served by a regulatory framework which permitted the Soo to sell Lake States in an expedited manner. Shippers in the region will have the benefit of access to a sizable rail carrier which is capable of providing uninterrupted, reliable and flexible service. Smaller shippers, in particular, should receive more attention from a carrier which has every incentive to encourage each carload of traffic. Without the burden of the Soo's cost structure, WCL should be able to make rail service competitive for more shippers, including some which presently have no alternative but to ship by truck. The communities in Wisconsin benefit from continued rail competition and the positive impact which rail service can have on local economic development activities. Since the WCL is purchasing track in the upper peninsula of Michigan which the Soo had abandoned, shippers in that state may well have an opportunity to see rail service restored.

The Soo plans to use the proceeds of the sale to reduce debts incurred in the purchase of the Milwaukee Road and this will significantly strengthen the Soo's financial position. Soo resources will henceforth be concentrated on improving the performance of a streamlined Soo system and our employees will benefit from this association with a stronger carrier. Finally, perhaps as many as 750 individuals, mostly former Soo employees, will now have employment opportunities with the WCL. If the Soo had decided to disinvest in Lake States and eventually abandon much of the division, these employees would probably not have had continuing employment prospects in the local rail industry.

In summary, the Soo Line would not object to an extension of the ICC review period for some line sales transactions as long as the length of the review period is known to the parties well in advance. However, we would strenuously oppose the

imposition of mandatory labor protection payments or a requirement that the new carrier negotiate implementing agreements with labor prior to approval of the transaction. Requirements such as these would have prevented the Soo Line from consummating the Lake States sale, a sale which received overwhelming support from shippers, communities and public officials.

I would be happy to answer any questions which the Committee may have.

Senator EXON. Thank you, Mr. Serkland. Let me start with you.

As a lawyer who obviously has read the previous NLRB procedures, and as a lawyer who has studied the Staggers Act, is it your legal opinion that the ICC has not gone beyond the intent of the Congress and the Staggers Act, with regard to many of the things that I am sure you heard about during our testimony today?

I am seeking a little free legal advice. That is the best kind of legal advice. The cheapest kind.

Mr. SERKLAND. With the caveat that it is usually worth what you pay for it, I will be glad to give it to you.

And that is that I do not believe they have gone significantly beyond any of the congressional intent that I see. I feel that a commitment to the congressional intent to deregulate railroads on the rate side must have been an intent, that railroads be able to deal with their costs.

Because for there to be no ability to deal with costs, yet to have rates deregulated and totally competitive, is an impossible situation for any business to be in, because it means ultimately that there will be a compression between the two, the rates you collect and your costs, which will lead to you going out of business.

I do not think there are too many alternatives to that. And for that reason, I do not believe that what has been done has gone beyond that intent.

The actual language of the Staggers Act did carry within it the obvious intent that labor protection not be imposed in every single transaction, because that was specifically given to the Commission in a discretion.

I believe the Commission has been very aggressive in issuing or in exercising that discretion. I believe that they have done so in a fashion which has been necessary simply because of the tremendous pressure that has been put on railroads by rate deregulation.

Senator EXON. Well, Mr. Serkland, I appreciated your statement very much.

Then you obviously think, the next step, and I do not know what you know other than what you heard today about the difficulties out in Montana.

But I do not believe that the Congress intended to allow things to happen by carte blanche authority from the Interstate Commerce Commission, with a fully operative, profitable road, as is the southern route of the Burlington Northern.

Now, I guess that is just a matter of opinion. In fact, I felt at the time, and I think most of my colleagues would agree, that we basically felt that these incentives, these chances to get things done were primarily directed at a short line or a regional railroad, when they were in bankruptcy, or when it was very clear that they were losing money on the line.

This is not the case, obviously, with the Burlington Northern southern route in Montana. But I do not know whether you are sufficiently familiar with that or not to comment on it.

But do you really think that at least the ICC is well within their legal rights to make the determinations that they have with regard to the Burlington Northern route in southern Montana which, for all case and purposes under the authority of the ICC, is no different than had they taken essentially the same action with a road in bankruptcy?

Mr. SERKLAND. Well, I will respond to that first with the out that you gave me, and that is that I really am not familiar with that situation.

I did examine the law, and the regulation as it applied to the Soo Lines, and I felt quite confident that it was a proper application to the Soo Line's Lake States sale.

I would also, I am not sure why, but with regard to congressional intent, I would expect that you may have a better feel for it than I do, Mr. Chairman. So I would defer to your statements as to what was intended when Congress wrote the Staggers Act.

Senator EXON. Well, I am not a lawyer and so I am not bound by all the rules that you people are in your training and education.

Mr. Fuller, let me ask you a question. The ICC procedures currently allow for exemption for sales to go into effect within 7 days of filing and prior to publication in the Federal Register.

Do you believe this process can be altered in terms of time or degree of information required without damaging these transactions?

Mr. FULLER. I think if the time altered is not material, yes. If it is material, then it causes problems.

I think I mentioned that 7 days or 30 days is not an issue. It is a question of knowing what you are going to have.

Senator EXON. I just have a question or two of you, Mr. Fitzwater.

You have heard a lot of the testimony today, and I am particularly interested in your feeling with regard to the fact that we have received a lot of testimony today that the Burlington Northern has made no contact with their employees with regard to their options in the contemplated sale to be completed on the 26th of October.

Is there a reason for that? Or is it not true?

Mr. FITZWATER. I think it is not true. I would like to go through some of the things that have been done.

First, there have been, as you are I am sure aware, a lot of uncertainties with respect to the startup. There have been several court challenges, along with challenges at the ICC on the revocation. So it has been very difficult for us to be in a posture to, with any certainty, talk about when the startup might be and what the rights of the individuals are.

I am sure you are aware that any employee that was working for Burlington Northern on the startup day of the 1970 merger has lifetime protection. Those employees all know that. There is nothing new or different about that. They know it is like a God-given right. About 600 and some of the 1,000 people involved have that type of protection. They will be able to stay with the Burlington

Northern system as long as there is a Burlington Northern system, and as long as they are in working health.

Secondly, the new railroad early on made a commitment that they would offer the jobs first to our employees. We encouraged that. That was part of the negotiations. We are anticipating that very few of our employees that have lifetime protection would give that up easily. And so we are guessing that most of those that will be readily available for the new railroad will be those that have the lowest seniority, the ones that have the least to protect.

If you run the numbers and look at it, we have about 600 and some lifetime-protected, out of about 1,000. This leaves about 400.

The new railroad is starting up with 750 people. Thus, we are confident that, with very few exceptions, everyone involved now either will receive a job offer from the new railroad or will be able through seniority rights or labor protection through the merger, to remain with the Burlington Northern. So, we do not see anyone being out on the street. There will be some dislocation, sure. But we do not see anyone going out on the street as a result of the deal.

In addition to the labor protection from the 1970 merger, the employees have their normal seniority, which means that they can transfer to other territories in the Burlington Northern system. Accordingly, we would expect those that were not on the payroll in 1970 to be able to exercise their seniority in this fashion.

One of the other things we have done in order to ease the transition and to make the sale more acceptable is that we have talked to the unions about offering all of our protected people the opportunity to take a leave of absence for two years to go work for the new railroad.

By way of clarification, I would point out that Burlington Northern does not control the seniority lists; the unions control them. Thus, we have discussed this leave-of-absence proposal with the BLE, the UTU, the Carmen, and BRAC. Up to this point, the only union that has accepted the offer is the BLE.

The BLE employees who are protected will have two options under this agreement. With the first option, they can take a \$25,000 buy-out and go with the new company. With the second option, they can take a 2-year leave of absence, during which time they could return to Burlington Northern, and at the end of 2 years, if they do not return, they would get a \$10,000 lump sum payment.

The other unions have not accepted the offer, and as a consequence we are powerless to offer that to the other employees. It is an open offer. If any of the other unions would like to accept the leave of absence concept, it is a standing offer to them. But as a railroad, we do not have the authority to grant the leave of absence. Only the unions can do that.

Finally, we have an 800 telephone number set up for employees to call in. If you think about the different crafts, we have something like 13 crafts involved. Each employee has a different seniority date, and each employee has different rights and privileges. The types of meetings that you went to in Montana, and the ones that I have conducted a couple of times in Montana, really are not very conducive to trying to sort out what the rights of each individual employee are. That is the reason we set up an 800 number so that

each person individually could call in, say what their position is, what they think their seniority is, and have someone in our company look up their records and try to give them some idea of where they might stand.

There will be dislocations, without any doubt. The timeframe for decisions are probably going to be shorter than we would have liked.

Senator EXON. What do you think that timeframe might be?

Mr. FITZWATER. Well, the problem is that if the new railroad is going to start up on the 26th, it has to have employees in place. And if it has to have employees in place, then someone is going to have to accept the offer. If an employee waits two months to accept the offer, the job might not be there.

So it is not something that is being driven by either of the companies as to when employees must accept the offer. It is being driven more by the startup date and the necessity to have employees in place.

So I would think that Montana Rail Link, if it is going to start the operation on the 26th, is going to have to have some commitments from people to be on board when it starts up. And so the driving force, as far as accepting or rejecting the employment offer, primarily will be Montana Rail Link's need for the employees.

Senator EXON. We may have some other questions that we will submit to you and ask you to respond for the record. But my last question to you would be, Mr. Fitzwater, how much risk would be placed on the eventual sale to be completed if the ICC should decide to give some additional consideration to this, possible hearings?

Let us just say for the sake of argument, if this sale were delayed from the 26th of October to the 26th of November, would that in your opinion seriously damage the chances of the completion of this sale?

Mr. FITZWATER. Yes, I think so. I do not think it would be from the Burlington Northern's standpoint nearly as much as it would from the Montana Rail Link's.

Montana Rail Link is out on a string now. The railroad industry is one that requires a lot of cash. One of the things that happens with the new companies, is that before they start up and get the cash machine rolling, they put out a lot of money really fast. That is where Mr. Washington is right now. He is in a posture of putting out a lot of cash now and could be stuck doing so for an extended period of time. And there would be a point where the cash outlay would break the camel's back. I am not sure but that he would be in a better position to answer this question than I am.

Senator EXON. May I ask at this time that the statement by Mr. Andrew Reardon, senior vice president-law and real estate, Illinois Central Gulf Railroad Company, be accepted and placed in the record.

Mr. Reardon prepared a statement in connection with this hearing and this hearing and was good enough to want it included in the record, in the interest of saving time.

Gentlemen, I thank you very much, Mr. Fuller, Mr. Fitzwater, and Mr. Serkland. And we appreciate your patience today. We appreciate your input into this hearing, and you are excused.

The final panel is a two member panel: Mr. Vernon Haan, director of logistics and planning for IMC Fertilizer from Illinois; and Mr. George L. Berg, Jr., assistant director, national affairs division of the American Farm Bureau Federation.

Gentlemen, I welcome you, and again I apologize for the lengthy delay. You have been awfully patient and we do appreciate that. We will start with Mr. Hahn.

STATEMENTS OF VERNON HAAN, DIRECTOR OF LOGISTICS AND PLANNING, IMC FERTILIZER, INC.; AND GEORGE L. BERG, JR., ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION

Mr. HAAN. Thank you very much.

I am Vernon Haan and I am appearing at the request of the NIT League, the National Industrial Transportation League. I am an employee of International Minerals and Chemical Corporation.

I have been in this business for about 37 years on both sides, rail and shipper. I have worked on branch lines, I have been an agent, a yardmaster, and so I know some things about it.

I appreciate the opportunity to appear, and we are appearing in support of S. 1026 that would amend title 49 of the United States Code to provide that transfers of secondary branch lines of railroads to noncarriers will not be exempted or approved by the Interstate Commerce Commission unless all relevant financial and operating information are before it.

Our single overriding objective is to improve the competitive position of rail-dependent U.S. shippers in domestic and world markets. I think yesterday tells you how important that can be to the favorable balance of payments.

Many of these shippers are customers of IMC, are located on secondary and branch lines, and these lines are subject to sale to other railroads or nonrailroad interests. Captive shippers in this position are especially vulnerable because, in addition to the lack of rail competition, they are constantly faced with the threat of total cessation of service.

We have been concerned since the passage of the Staggers Rail Act in 1980 with the policy of the present administration as reflected in repeated decisions of the present Interstate Commerce Commission permitting the railroads to enhance their financial position at the expense of captive shippers, those least able to defend themselves, by withdrawing from implementation the residual regulation that exists in the Interstate Commerce Act.

One manifestation of this policy is the Commission's allowing the railroad industry to price services as much as possible free from the restraint of both rail competition and from government. The shippers that have paid the price for this have been those who are most dependent on the railroad services, but have the fewest transportation options. They are the captive shipper.

The bills before the subcommittee deal with a serious problem that results from another manifestation of this policy, the Commission's blanket exemption from its jurisdiction, without reference to the circumstances of any individual case, of transactions shifting

the ownership of branch lines from the large regulated carriers into the hands of non-carriers.²

The problem that results from such transactions is the high risk that in the hands of the purchaser the transferred line may not be kept in rail service.

We fully understand the value of transfer of tracks that are abandonment candidates to third parties that may be able to preserve them through operations with lower labor costs and to attract more business with reduced rates. I was quite interested in John Riley's comments on that and I concur with them.

And we are familiar with the problem posed by the blanket exemption, which is of a less importance where the line is a real candidate for abandonment. The Commission's blanket exemption, however, is not in any way so limited. It applies to transfers to non-carriers regardless of the viability of the track, and would fully apply to a transfer to a purchaser who may intend to scrap, not operate, a viable line.

Under section 10901, the railroad that wants to divest itself of a branch line to a non-carrier files financial and operating information with the Commission in an application, which the Commission must review to determine whether the transaction is permitted by the public convenience and necessity.

Under the blanket exemption, however, no such information or application is filed with the Commission. The only thing the Commission sees is a notice of exemption, which becomes effective by operation of law 7 days later. The Commission then publishes it in the Federal Register within 30 days.

After this, anyone may seek to have the exemption revoked, but by this time the transaction will normally have been consummated and the harm to the public interest will have become irreparable.

We believe the Commission should look at the facts of proposed individual transactions before exempting them from regulation. There may well be reasons for not permitting the transfer, reasons of which the Commission would never be aware under its blanket exemption, in time to block the sale.

We think the Commission simply cannot carry out its duty to the public unless it makes sure it has the information in front of it from which the public convenience and necessity can be determined.

The relevant information should not come just from the railroad, the purchaser, and government of the State in which the trackage is located. It should also come from the other interested parties.

For this reason, of the three bills before this subcommittee, we support Senate 1026, which in addition to providing that the Commission will have before it the financial and operating information contained in an application and the underlying contracts, and that it will also have the input from the State or State agency involved, also provides that any interested party may file comments within the 30 day period after the State receives notice.

² Ex Parte Docket No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1985).

This bill will not have the effect of preventing the ICC from subsequently approving the transfer to a non-carrier or granting an exemption if the circumstances warrant.

I believe I can finish in one minute.

Senator EXON. Go ahead.

Mr. HAAN. Our recommendations are:

One, we recommend that S. 1026 be passed;

Two, we suggest that the provision for comment by interested parties in S. 1026 will be strengthened by the addition of some provision for public notice to inform the interested parties of the pendency of the application, such as posting the application along the line itself and publication in newspapers of general circulation in the area served by the line;

And three, we would also register our strong opposition to sales of secondary and branch lines to any purchaser conditioned on the promise by the purchaser not to make use of the line to compete with the lines of the vendor railroad.

This kind of anti-competitive condition was reportedly included in the agreement to sell the Lake States Railroad by the Soo Line to the Wisconsin Central Limited, and was the subject of strong dissent by Vice Chairman Lamboley and Commissioner Simmons³ of the Interstate Commerce Commission. This was an exempt transaction, but this kind of condition should be prohibited in any transfer of rail lines under any circumstances. We therefore recommend that language barring an agreement not to compete be included in the proposed legislation.

And finally, I might mention that IMC did support the acquisition of the Wisconsin Central by the new owners.

Senator EXON. Mr. Hahn, thank you very much.

Mr. Berg.

Mr. BERG. Thank you, Mr. Chairman. My name is George Berg and I am representing the American Farm Bureau Federation.

I appreciate the opportunity to address the subcommittee on legislation relating to the sale, acquisition, and abandonment of railroad lines. My comments will be directed to the procedures regarding rail abandonments, the impact the abandonments have on rural communities, and the need for short line or regional railroads.

Agriculture is America's most important industry, accounting for about one-fifth of the U.S. gross national product. The very existence of thousands of cities and towns across the country is dependent upon agriculture. Agriculture, like the Nation as a whole, needs an efficient, sound, healthy railroad system.

Railroads are vital to agriculture because they haul large volumes long distances at very reasonable rates. They connect almost all the important agricultural regions and markets in the United States, and they do provide year-round service.

The purpose of the Staggers Rail Act of 1980 was to provide for the restoration, maintenance and improvement of the physical facilities and financial stability of the U.S. rail system. To help achieve this purpose, the act revised the Interstate Commerce Com-

³ ICC Finance Docket No. 31102, *Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company*, served October 9, 1987.

mission [ICC] procedures regarding rail abandonments. Since rural America is uniquely dependent upon transportation, deteriorating service and railroad abandonments are of vital concern especially to farmers, ranchers and the communities in which they reside.

The legislation under consideration would establish an expedited process for reviewing proposed sales of short line railroads. The legislation would require a degree of local review into the short line sale process, in order to assure that the concerns of the affected worker, shipper, and community involved will be fully considered.

In recent years, shippers, particularly those in rural areas, have been faced with accelerated railroad abandonment activity. The ICC has seemingly adopted a policy of leaning toward the approval of any abandonment application submitted by a carrier.

The sale or spin-off alternative has become more and more common. The Interstate Commerce Commission has adopted a policy to encourage this alternative. First, they refused to impose labor protection on sales to new carriers under section 10901 of the ICC Act.

Secondly, they allowed these transactions to take place in an expedited fashion by granting them an exemption from regulation. Thus, preservation of rail service as an alternative to abandonment became the attractive option for class I railroads.

Since 1980, 144 new small railroad companies have been created. They operate 11,800 miles of track that would have otherwise been prime candidates for abandonment.

The railroad abandonment process places a great deal of pressure upon communities and shippers dependent on such threatened freight transportation. It has also placed pressure upon the employees affected by these abandonments. The prospect of success for those contesting rail line abandonments have been anything but bright, considering the decisional record of the ICC over the past few years.

The Farm Bureau has received many inquiries concerning the feasibility of short line or regional operations. Obviously, any decision to purchase and operate a rail line requires careful planning and consideration. Not every abandoned line can be operated economically.

Unfortunately, the procedure in the abandonment application process brought on by the Staggers Act also makes it necessary for protesters to move quickly in effecting their opposition.

Therefore, allowing a period of time for local review of short line sales as proposed in the pending legislation would not appear to be an unreasonable requirement. The local review would enable the community to determine the community impact of not having rail service over their line.

The community impact is the social, economic, and environmental effects of not having a railroad. They encompass rail users, rail user employees, railroad employees, community businesses, services, and their employees. The community impact should also include income, taxes, transportation, social structure, and the well-being of the community.

Agricultural interests have certainly done everything possible to promote short line or regional railroads as an alternative to abandonment. Major railroads selling these line segments eliminate the

high cost maintenance and labor burden of retaining the trackage, recover some economic value for the line, and retain access to traffic generated on the line.

Those acquiring the rail lines are able to operate the line more profitably because of substantially lower labor costs and are better able to provide shipper-oriented service.

Furthermore, shippers who might otherwise lose access to direct rail service are able to preserve that service, while communities interested in industrial development are able to preserve direct rail service.

In summary, Mr. Chairman, transportation impacts heavily on the economy of our country and determines the economic wellbeing of our communities, large and small alike. Increased emphasis must be placed on preserving and improving our existing transportation system to meet the needs of rural America.

We believe that the legislation under consideration would be in the best interests of local communities which are dependent upon rail service.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions.

Senator EXON. Mr. Berg, thank you very much.

Mr. Berg and Mr. Hahn, we really appreciate your patience in waiting. You have given us some terribly important testimony.

Fortunately or unfortunately, depending on your point of view, the hearing focused on the immediate problem in Montana. But we thought it was very important to get input from people like yourselves and the organizations you represent with regard to the increasing difficulty that we seem to be having with the ICC with regard to captive shippers.

And captive shippers is a cause that many of us have been fighting for for a long, long time. Once again, I would simply state that it is my view that the majority of the Congress felt that and recognized the protection that was mandatory for captive shippers under deregulation, not unlike the situation when we deregulated the airline industry we recognize there were going to be some captive shippers in the smaller communities that would lose the service that they formerly had.

In that particular case, you know, of course, we tried to solve that and did to a considerable degree with an Act that allowed compensation for airlines to get started in the have-not population areas of the United States.

So the input that you have given us simply reinforces the concern that we have had, and especially those of us from rural States, who have had lots of problems with abandonments and lots of problems with captive shippers.

I would simply say that, as far as Nebraska is concerned, we have all but eliminated the difficulty with captive shippers. There are some.

We used to have—I have worked extensively, Mr. Hahn, with our feed, seed, and fertilizer people in Nebraska when this act was passed, and I think we hear practically nothing from them any more.

It just so happened that most of the lines were abandoned early on and, with the two major railroads that we have that are both

good railroads, we do not have an awful lot of complaints any more.

We have had, though, some. I think you might be familiar with one of the good things that happened with regard to the ICC. A public utility in Omaha was a captive shipper and indeed sued in the courts after the ICC did not act, and then won. And that is the first time we got the attention of the ICC to the fact that they were not czars that could interpret the law as they saw fit.

I do not have any particular quarrel with the majority of the ICC, except that I think that they are taking a position that whatever they think is fair and reasonable should be the prevailing law of the land, and have kind of twisted and expanded the authority that was given them, to the place where they have given these blanket authorities for mergers, causing us to run into this storm of protest from people in Montana.

Nebraska is different only in that we have two major railroads and we have not had the problem. But that does not mean we could not have some in the future, and that is why we are taking a good long look at this, and that is why input from people like you is important as we move ahead and, if necessary, make some changes in the law which I think probably are not necessary if we could just get a different component of people on the Interstate Commerce Commission, which may take place in all due course.

Thank you very much for appearing here, and we are adjourned.
[Whereupon, at 2:55 p.m., the subcommittee was adjourned.]



ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF KENT CONRAD, NORTH DAKOTA STATE SENATOR

Throughout much of this hearing we have been told how shortline railroads are preferable to abandonment. We have been told that short lines sales, as opposed to abandonment, will provide jobs, continued service to the areas affected, better safety, flexible cost schedules, and lower inventory costs.

Rail service is of vital importance to my state. North Dakota needs an efficient rail service to move its commodities from field to market. Small communities need to be linked to nationwide transportation systems in order to survive. For my state, rail service in some form is essential. However, we need to have safeguards in place which afford us an opportunity to examine the effect of proposed changes to our rail system.

S. 1040 is designed to make short lines sales subject to the same Interstate Commerce Commission provisions as Tier I railroads. In essence, a public hearing would be required before a short line sale could be approved by the ICC. This would allow public input and public disclosure of the possible impact on affected communities, employment, rates, service, and would also provide for scrutiny of the purchasers ability to maintain the proposed short line on a long term basis.

Under current law, the following scenario is possible: A class I carrier sells a profitable short line to an independent purchaser. The class I carrier had not considered abandonment of this profitable line prior to the sale. The purchaser, without having undergone any scrutiny of financial ability to operate the short line, is unable to keep the short line in operation and soon after purchase defaults on its obligations.

What happens to the short line under the above scenario? Does the class I carrier assume the independent purchaser's obligations and labor contracts? Does the line become abandoned?

The public hearings provisions of S. 1040 would make a big step in eliminating potential problems with short line sales. If our goal is service, then it is only common sense that we take a step to ensure that service. The requirement of a public hearing should in no manner affect a purchaser who wants to and is able to provide service. It will prevent abandonment that is disguised as a short line sale and it will ensure that our goal of service is met.

I therefore urge the committee to give its every consideration to the provisions of S. 1040. This bill will provide a means for determining the impact of short line railroad sales.

STATEMENT OF JOE BRAND

Mr. Chairman, members of the committee, my name is Joe Brand, and my address is 812 Saddle Drive, Helena, Montana, 59601. I am presently Montana State Legislative Director of the United Transportation Union, and I have also served ten (10) sessions as a Montana State Legislator.

I am very concerned about the sale of Railroad Property to non-railroad operators. Such sales being granted by the Interstate Commerce Commission through the Staggers Act in 49 USC 10901. No notice is given to the public even if warnings in advance of the sale is wrong. The ICC ignores the public's information, and their position is that all deals are in the best interest with no or very little review.

I would like to address the sale of Burlington Northern Railroad to Montana Rail Link, specifically because in my opinion, it is a blatant disregard of the law.

This is not a short line railroad, it is the main line of the former Northern Pacific Railroad, and the track is maintained as well as the Amtrak corridor between Washington, D.C., and New York City. They run between fifteen (15) and twenty (20) trains a day over this track. It is a money maker for the Burlington Northern Railroad. This portion consists of six hundred (600) miles of main line track, and over three hundred (300) miles of branch line, employing over nine hundred (900) people.

This sale is based on lease of track and very little sale. As an example, the center is leased from the Phosphate to Helena, which gives permission for M.R.L. to operate over this segment.

In my opinion M.R.L. is buying two railroads in violation of this act. Also they are leasing Spokane, Washington to Sand Point Idaho, and Laurel, Montana to Huntley, Montana, and the rest of the main line on a lease agreement until the bonds expire. Then at that time the sale will be made. To me this is telling the bond holders, of which I am one, even if you own the bonds, and the land that was originally given to the Northern Pacific through land grants, we are disregarding you people, who are bond holders. Also the Federal Government who gave these vast sections of land with the stipulation that a railroad be maintained by the Northern Pacific or a class I carrier is also being ignored. This information and along with other vital information such as their financial structure or their ability to continue to operate a railroad has not been disclosed to the Federal or State Governments. Also if a hazardous materials accident happens will they be able to handle a disaster expeditiously and financially.

Mr. Washington, who is the principal investor in the new corporation also owns the former copper, gold, and silver operations in Butte, Montana. I personally feel by owning a company that ships products, and also owns a railroad is in violation of the Railway Labor Act, and this should be looked into.

You and your committee's discussion on this matter will have an impact on the entire sale of transportation in America. If you people in Washington do not do something immediately, you can kiss the rail industry good-bye.

Ten years ago the railroads told you people in Washington bigger was better, and you bought it. Now they are telling you smaller is better. If you had never listened to these corporate giants, but instead listened to the farmers, small business people, and the workers that are affected this country would be in a better position today. Just keep tearing down this country's industrial, rail, and manufacturing base, and militarily this country can be had for the asking.

Anything you or your committee can do to save this nation from within will be appreciated. Thanking you and your committee in advance.

STATEMENT OF JOHN H. MARINO

Mr. Chairman and Members of the Subcommittee: My name is John Marino. I am President of the Huron and Eastern Railway Company, Inc., an 82.5-mile shortline railroad operating in Huron and Sanilac Counties in Michigan. The Huron and Eastern was formed in 1986, out of three branches formerly owned by the CSX Transportation Company. The line serves primarily an agricultural market area.

I am pleased to present this testimony on behalf of the Huron and Eastern and on behalf of a group of similarly situated shortlines from various parts of the country, listed in Appendix A to this statement. My testimony is in opposition to parts of the legislation before the Subcommittee but in qualified support of some of the concepts.

The Huron and Eastern, like virtually all of the group, was formed after passage of the Staggers Rail Act of 1980. The Staggers Act was one of the most important pieces of transportation legislation to pass the Congress, countering decades of overburdensome and stifling regulation. The Act freed the railroad industry from many of the severe handicaps of the prior regulatory scheme and, in the case of Huron and Eastern, has permitted the continuation and rejuvenation of local rail service to several rural and agricultural shippers located along our rail lines. The key provisions accomplishing these results were: easing of abandonment regulations and encouragement of methods of purchase rather than abandonment of marginal rail lines such as ours; permitting railroads to enter into contracts with their customers, thus allowing railroads to stabilize revenues and more accurately develop future business plans and budgets; permitting market-based pricing of services, as well as the ability to change prices quickly enough to meet ever-changing truck competition; and permitting the ICC to exempt, or partially exempt, from regulation those matters which do not need government supervision (matters not needed to carry out the transportation policy, and which are either of limited scope or not needed to protect shippers from the abuse of market power).

The railroad industry as a whole, and the shortline industry in particular, has taken these changes to heart in learning to operate in a competitive environment. Most new railroads now use transportation contracting, for example, to ensure that they have adequate levels of business to continue operations. Railroads can use the new flexibility to compete effectively in terms of both rates and service. They can

meet quickly changing truck rates and can make arrangements to address special service needs.

The Interstate Commerce Commission (ICC), for its part, has used its new authority to make two other absolutely essential changes to the regulatory landscape.

First, the agency has issued a rule allowing shortline sales to be exempted, subject to stay or revocation, from much of the regulatory applications process involved in most large sales. This is important for several reasons. A shortline railroad is truly a small business, generally operating less than 100 miles of track, with relatively small numbers of employees. It is generally privately financed, but often with public funding (derived from the issuance of industrial revenue bonds) for track rehabilitation. The new railroad's tracks are often in need of major rehabilitation work because of long neglect by the selling railroad.

Such shortlines can afford neither the cost nor the delays inherent in a full-blown application proceeding. Contrary to claims made by some parties, any additional cost imposed on the selling carrier will, of necessity, be included in the purchase price, and may very well result in higher transportation charges to the customer. This can jeopardize the desired preservation of service by making it noncompetitive. Unnecessarily high labor costs and benefits were one of the major factors driving Class I railroad abandonments in the first place.

Moreover, the exemption is important because complicated regulatory supervision is not needed in the types of transactions involving these small railroads. Most local communities are pleased to have their rail services maintained or restored, often after years of inadequate or non-existent service. The expedited process minimizes the uncertainty and delay that has in the past forced potential rail users to seek out other alternative transportation modes.

The exemption process has in general worked well. It gives both seller and purchaser (and financial backers) a definite time frame during which transactions should be completed, rather than the indefinite and delayed process which was the rule earlier under conventional abandonment and purchase procedures.

The ICC has also made it clear that stay or revocation are available and will be used where they are needed. It recently exercised its stay authority in a sale transaction involving a very large purchase, the *Wisconsin Central* case (Docket No. F.D. 31102, *Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company*, served September 11, 1987), in order to give itself time to study the transaction in more detail. It has also decided to hold a field hearing in Missoula, Montana, on the Burlington Northern's sale of its line from Huntley, Montana to Sand Point, Idaho.

Finally, it is reconsidering the application of the exemption process altogether in certain respects. In Ex Parte No. 392 (Sub-No. 1), the ICC asked parties to comment on whether the 7-day notice period for exemption should be expanded, and whether additional financial and operating information should be required to be submitted, in some or all sales transactions.

The second major change in policy the ICC has made is also based on the philosophy of creating a climate for rebuilding the railroad industry at both the local and national level. The agency, after considerable study of the question, determined to exempt most short line sales transactions from the so-called *New York Dock* labor protection provisions (*New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), so long as the sale is to a non-railroad. See, *Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1985).

The reason for the change should be self-evident. *New York Dock* required that any affected employee in a line sale be given six years of full pay. Although the economy and the industry may have once been able to pass the resulting higher costs along to the stockholders and their customers, in today's competitive deregulated environment, neither short lines nor the selling railroads can afford to continue this type of costly protectionist treatment of the railroad labor force.

No other industry has protectionism even remotely resembling this. Both the steel and automobile industries, for example, have faced severe retrenchment in recent years (partly, it should be noted, because of high labor costs and lack of competitiveness), and they have reduced their workforces to adjust to the changing economic realities. Both these industries were able to decrease their breakeven points, and as a result have become more competitive and have recaptured market share. Consequently, they have been able to recall previously furloughed employees.

The difference in treatment of the railroad industry as contrasted to others becomes highly relevant where the lower cost industry involved is a competitor. When railroads are required to bear unnecessary costs, such as *New York Dock* imposes, and the trucking industry faces no such burden, then railroad costs are too high,

they cannot effectively compete, and they lose business. This is precisely the pattern which prevailed for years before the Commission's change of policy.

These changes in ICC labor protection policy have been good for the nation's economy, especially in rural and low-income traffic areas. Under the pre-Staggers regime, Class I railroads often saw steadily decreasing traffic levels on their low-density lines as a result of high costs and rates. They were saddled with a large labor force that imposed manning levels and work rules that were more appropriate to high density mainline operations. And they could not sell the lines to others without paying this bloated labor force for six years as if it were still there. So they made the most rational economic decision they could—slowly decrease service on a branch line, defer maintenance, increase rates, and lay off workers as the traffic inevitably dried up. When the line was virtually unused, they could abandon it without major labor costs.

Under the present ICC policy, new railroads have sprung up where once the only alternative was abandonments. Small towns and rural areas have seen rail service preserved or restored. The change in policy has been good for rail labor as well, as jobs are created once again not only on the low-density lines but on main lines as well. The experience of the Huron and Eastern is a case in point. We have retained jobs. We pay good wages and benefits, better than those prevailing in the area. Our benefits in many cases exceed those formerly provided by the selling carrier. Bonuses are paid based on the productivity and profitability of the company.

The statistics on the formation of new shortlines attest to the utility, and necessity, of these changes to the prior regulatory structure. Since passage of the Staggers Rail Act in 1980, more than 190 new shortline and regional railroads have been created, and at an accelerating pace. Sixteen new ones were formed in 1981, and 41 in 1986. In total, they operate 7,591 miles of line and employ 1,629 full time employees.

Another benefit of these changes has become apparent—the discovery that the shortlines are generally better than their Class I counterparts as retailers in local and rural communities. The shortlines are owned and operated by entrepreneurs who have local contacts in their communities and who have the time and interest to pay close attention to their customers. They can be innovative and flexible and can thus serve their customers better, in general, than could a large and physically distant Class I carrier.

This Subcommittee is considering three pieces of legislation which could have a devastating impact on shortline sales and on the improvement of service to rural and low-traffic areas of the country. These bills are S. 816, S. 1026 and S. 1040.

Senators Baucus and Burdick have introduced identical bills, S. 816 and S. 1026. This legislation is procedurally the less objectionable, and in fact is a useful concept in some ways. It would require that notice of proposed line sales be given to state regulatory authorities, who then would have 30 days to file objections. Any objections would trigger a 60-day ICC review process to determine whether exemption was appropriate under the circumstances.

However, there are two serious difficulties with the bill. First, it prohibits the ICC from exercising its discretion to decline to order *New York Dock* labor protection. Thus, all shortline sales transactions would once again be subject to the protectionist and unaffordable six-year pay and other requirements of earlier times. If this provision were passed, there is no question about that the railroads would revert to abandonments of lines rather than sales to a low cost shortline for continued service. Under those conditions, labor would lose jobs rather than making the gains they hope for. A competitive environment simply cannot support such uneconomic costs.

The second problem lies not in the bill itself but in the fact that Senator Baucus, in his oral testimony before the Subcommittee on this bill, suggested that he would be interested in changing it to adopt some of the provisions contained in the bill introduced by Senator Melcher, S. 1040.

Senator Melcher's bill is short but disastrous. For any line sale involving more than 100 miles of trackage, it not only would reimpose mandatory labor protection, but also would require maintenance of specific levels of service and rates, no matter what the changes in traffic conditions. Protection of a buyer from arbitrary adverse actions on the part of the seller is certainly an important issue in some transactions—for example, where there are two parallel lines and a few exists that the selling railroad might divert traffic from the new railroad to the seller's remaining line. A seller could renege on promises to maintain certain levels of overhead traffic, or certain rate levels for its portion of joint hauls.

However, legislation is emphatically not the way to accomplish that end. Such matters are for the parties to work out in the sales process. Surely a buyer will not purchase a line for which there are no assurances of traffic sufficient to make the line self-sustaining. That would be economic suicide. If there is not sufficient over-

head traffic to sustain both the lines, or if it is not possible to develop traffic originating on the line, then forced maintenance of the line will be uneconomic. The inevitable result will be a return to deferred maintenance, further decreases in traffic levels and eventual abandonment of one or the other line.

On the other side of the coin, legislating the status quo for all line sales would reintroduce a rigidity making it very difficult for buyer, seller and shippers to adapt to changing requirements of their businesses.

In summary, the shortlines represented here object strenuously to any attempt to mandate labor protection for shortline sales transactions. Railroads the size of those in this group simply cannot bear the costs associated with such outdated rules and pay requirements. The nation will lose if Congress legislatively reimposes unrealistic labor costs on these transactions. And labor will lose as well, as shortline sales will cease and we will be faced with massive abandonments and the permanent loss of thousands of railroad jobs.

With respect to the exemption process, many shortline railroads would not object to (1) modest extension of the 7-day notice period where that was necessary or, alternatively, (2) a more focussed method of communication of the notice. There have apparently been reports that in some cases 7 days has not been an adequate time sufficient for some potential objectors even to find out about a transaction in the Federal Register, let alone to formulate comments. If this is true, it must be rectified.

The particular amount of time is not as important as the need for certainty and a short enough comment and consideration period to ensure that transactions proceed to completion and investors do not back out for lack of certainty and progress.

Thank you for your attention.

STATEMENT OF ANDREW F. REARDON, ILLINOIS CENTRAL GULF RAILROAD COMPANY

My name is Andrew F. Reardon. I am Senior Vice President-Law and Real Estate of the Illinois Central Gulf Railroad Company (ICG). My business address is 233 North Michigan Avenue, Chicago, Illinois 60601.

ICG was created in August, 1972 as a 9,691-mile railroad from the merger of the Illinois Central Railroad Company and the Gulf, Mobile & Ohio Railroad Company. At the present time, ICG operates slightly more than 3,000 miles of railroad in mid-America, extending generally from the Great Lakes to the Gulf ports of New Orleans, Louisiana and Mobile, Alabama. Our railroad serves the states of Illinois, Kentucky, Tennessee, Mississippi, Louisiana, and Alabama and the major freight gateways of Chicago, St. Louis, Memphis and New Orleans. We currently employ approximately 4,300 people. The principal commodities we transport are grain, grain mill products, chemicals, paper and forest products, coal, trailer and container traffic.

We at the ICG appreciate the opportunity to submit this statement for the record of this hearing into the sale of line segments by major railroads and the creation of new regional railroads. We believe that this trend is one of the more exciting and successful developments in railroading today and we are pleased that ICG could play a pioneering role in it.

ICG's experience with sales of railroad lines actually dates back to 1974 when it sold its 68-mile line west of Natchez, Mississippi in Louisiana to Louisiana Midland Railway Company. One year later, ICG sold its 168-mile line between Columbus and Greenville, Mississippi which it had acquired at the time of the ICG-GM&O merger in 1972.

From 1975 to the middle of 1984, ICG sold an additional eleven line segments totaling 470 miles to shortlines after receiving orders from the Interstate Commerce Commission authorizing abandonment of ten of the eleven line segments. The most meaningful of ICG's line sale activity began in 1985. I will cover this in more detail later in my statement.

THE NEED FOR SYSTEM RATIONALIZATION

The sale of line segments by major railroads evolved as a logical and more preferable alternative to the traditional solution of abandonments as a means to reduce costs and streamline railroad systems. Prior to 1984, ICG's principal method of rationalizing its system was through abandonment of railroad lines which, in only a few instances as we have noted, were purchased by shortlines created by shippers or by local communities interested in continuing rail service to their plants or communities.

To understand the underlying rationale for the ICG line sales, it is important to understand that the ICG, and indeed the entire railroad industry, has been in a state of transition dating back to the bankruptcy of the Penn Central and related lines in the early 1970's. The financial collapse of these Northeast railroads was brought about by a combination of factors, including a decline in basic industries which had traditionally shipped by railroad, fierce and subsidized competition from trucking firms, inadequate freight revenues and reduced capital investment, and an outmoded, burdensome system of federal economic regulation.

The problems within the railroad industry soon spread westward and continued with the bankruptcy and eventual demise of the Rock Island and the substantial reorganization and downsizing of the Milwaukee Road. In the Midwest, railroads simply had too much track and equipment for the traffic base which had declined as a result of basic industry retrenchment and fierce competition from trucks and barges. Midwest railroads came under intense pressure to streamline their systems in order to survive.

From the ICG's standpoint an additional factor which placed great pressure on us to rationalize our system has been the wave of megamergers among major railroads. The effects of the megamergers in the industry have placed significant economic pressure upon ICG's ability to provide rail transportation service at a profit. In particular, due to the fact that the major mergers have been largely oriented in an east-west direction, significant volumes of traffic began to be routed around ICG east-west trackage, dramatically reducing the profit margins of operations of many of those east-west ICG rail lines. In 1982, prior to the major ICG line sales, ICG's revenues decreased \$138 million from 1981 to a level of \$905 million. In 1983, revenues declined still further to \$881 million resulting in a loss of \$16 million for the year. Because of a reduction in ICG operating expense including a 34 percent reduction in its work force and a 39 percent reduction in management employees starting in early 1982, ICG experienced a return to profitability in 1984 and 1985.

All of the foregoing developments led ICG management to conclude that our efforts and resources should be concentrated upon the core line traffic from Chicago to the Gulf. This required the elimination of the unprofitable and marginally profitable ancillary lines which have subsequently become the subjects for sale to regional carriers which can operate these lines on a more profitable basis.

AT ICG we firmly believe in the viability of the core line which is a major link in the nation's transportation network from Chicago to the Gulf. However, with equal firmness we believe that the viability of that core line would be threatened in the event that the ICG had been unable to engage in sales of other parts of its system to regional carriers. If the opportunities for such sales had been reduced or eliminated, not only would ICG investors have suffered, but also ICG employees, the shipping public and the communities we serve would have been adversely affected.

ICG LINE SALE PROGRAM

ICG's activities in rationalizing its system to a heavy-density core system have gone beyond the creation of the so-called "shortlines" and have led to the creation of several regional railroads within the last three years, some of which are rather substantial in size.

The major portion of the ICG line rationalization program involving the new regional carriers commenced in July, 1985. In that month, we completed the sale of 713 miles of track in East Mississippi and Alabama to the Gulf & Mississippi Railroad, which was formed by the L. B. Foster Company. On December 24, 1985, we sold our lines from Chicago west to Omaha, Nebraska and Sioux City, Iowa, 674 miles to Chicago, Central & Pacific Railroad Company.

On March 31, 1986, we sold our Meridian, Mississippi to Shreveport, Louisiana line, plus a line to Gulfport, Mississippi, a total of 280 miles to MidSouth Rail Corporation. In August of 1986, ICG sold its rail lines between Paducah, Louisville and Clayburn, Kentucky to the Paducah and Louisville Railway Company, lines consisting of 304 miles of track for \$70,000,000. On April 28, 1987, we sold our rail line from Joliet to East St. Louis and to Kansas City, Missouri, consisting of 634 miles to the Chicago, Missouri & Western Railway for the amount of \$81 million. On the very next day we sold our Chicago commuter line to Metra, the regional public transportation agency in Chicago, for the amount of \$28 million. Recently, ICG has entered into a contract with Norfolk Southern Corporation to sell 224 miles of trackage from Haleyville to Birmingham, Alabama in the amount of \$38 million. With this sale, it is intended that ICG will have completed its line rationalization program which we regard as a historic and economic feat which will have placed our Company in a key position to be a smaller but economically more viable trans-

portation competitor. A concise summary of these major transactions in the ICG line sale program appears in attachment A to this statement.

ADVANTAGES OF REGIONAL RAILROADS

While indeed, creation of regional railroads in some instances represents a step toward a region's economic survival, there are significantly more positive attributes to the formation of these regional carriers other than mere survival. Regional carriers can accomplish what the trunk carriers find most difficult: the providing of rail service over short distances on a profitable basis. Due to local ownership and control, carload shippers and intermodal customers get hometown rail service at competitive prices. The regional operators provide local shippers with a car supply tailored to their individual needs together with customized plant servicing, switching and interchanging.

In the area of labor relations, the regional railroads together with the rail labor unions appear to be in the vanguard of future industry relations. With the increase in productivity, profit sharing plans and elimination of antiquated work rules, the regional roads have been able to succeed where candidly, the trunk lines have failed. Clearly the regional roads have brought to our industry a fresh and productive approach to be shared by employers and employees alike.

One of the advantages which regional railroads have over Class I carriers is the ability of the former to negotiate work rule changes with the labor unions. Large railroads have simply not been able to accomplish this. This ability is critical for continued operation of a lighter density line of railroad. As a result, the regional roads can operate this type of line more efficiently in many instances than can the trunk railroads. Almost universally, the regionals are able to negotiate with the unions toward smaller crew sizes. Some of the regional lines which have negotiated labor agreements such as the MidSouth Rail Corporation have been able to negotiate away the old rule that 100 miles of travel earned a day's pay. This type of antiquated and expensive wage level, which after exhaustive negotiations has recently been increased to 102 miles per day for Class I railroads, virtually eliminates any hope for profit on a short haul of a few hundred miles. In place of such anachronisms are profit sharing plans and the so-called "401 (k)" savings plans to which employers and employees contribute.

The regional railroads have also been able to negotiate with fewer unions than have the larger railroads. For example, the Gulf & Mississippi Railroad employees are now covered by six unions, whereas, under ICG's ownership there were thirteen separate unions. The Chicago, Central & Pacific's union contract includes a new position called "master journeyman". This is a combination of three job categories: machinist, electrician and car repairman. By way of specific example, under ICG's ownership of the line, if a headlight was burned out on a locomotive, the bulb could only be changed by an electrician; under the Chicago, Central & Pacific Railroad contract, any "master journeyman" can perform this task.

Work rule changes, including the reduction in crew size, clearly permit these regional carriers to operate more efficiently with the ability to establish competitive rates and provide better service to their customers.

Another positive phenomenon which we observe from the operation of regional railroads is that the payout for personal injuries at this point in time appears to be less than the payout by the trunk line carrier operating on the same trackage. We believe that this will be particularly significant where the regional railroad has a profit sharing plan such that personal injury payouts serve to reduce the profits. As you are aware, the railroad industry is not covered by state workman's compensation laws but rather is operating under a negligence statute such that when an employee injury occurs, the employee oftentimes files a lawsuit against the employer under the Federal Employer's Liability Act. Because of the litigious nature of our society, aggressive pursuit of legal business by attorneys and the fact that this statute unfortunately pits the employee against his own employer, the payout is exorbitantly high. In fact in 1986, the FELA personal injury payout in the industry eclipsed \$500 million. Unfortunately, this is borne by the public who ultimately pays for it in the form of higher shipping rates, etc. Here again, where a profit sharing plan adds to the sense of cohesiveness between an employer and employee, spurious claims and unreasonable demands for injuries are avoided and litigation is minimized because the employees and the employer are working toward a common goal, the sharing of "profits".

Regarding employment on the regional railroads, former ICG management employees and scheduled employees were hired by most of the regional roads to operate these new companies. The Gulf & Mississippi Railroad hired 207 ICG scheduled

employees; the Chicago, Central & Pacific Railroad hired 409 ICG scheduled employees; and MidSouth Rail Corporation hired 278 ICG scheduled employees. Collectively, those three regional roads hired about 77% of ICG scheduled employees who operated the lines before the sale. The creation of these regional railroads has served to preserve jobs on light density lines which would otherwise have been abandoned in whole or in part.

IMPACT OF FEDERAL POLICY AND LEGISLATION

The evolution of railroad line sales thus far has been helped along measurably by two significant developments at the federal level: (1) a positive regulatory initiative which has streamlined the approval process for line sales; and (2) a federal policy which has been opposed to costly labor protection which if present, would have greatly increased the cost of these transactions.

In the first instance, I am referring to action by the Interstate Commerce Commission to line sale transactions. Ex Parte No. 392 (Sub-No. 10), which was effective February 17, 1986, permits a noncarrier to acquire a line of railroad by filing a seven-day notice with the Commission. This expedited procedure has facilitated line acquisitions by non-rail carriers and eliminated unnecessary regulatory burden and related legal fees. Moreover, this new shorter approval process has for the most part eliminated the delay and uncertainty which jeopardized the consummation of earlier line sale transactions. Frequently, the closing of these line sales involve delicate labor negotiations and financial arrangements which are structured according to agreed-upon deadlines and timeframes. The predictability which this expedited approval process provides goes a long way toward eliminating the possibility that these transactions will fall apart because of procedural problems.

While the ICC's policy of streamlining the regulatory approval process has been a tremendous boon to the development of the new shortline railroads, we recognize that there are legitimate concerns about the adequacy of this regulatory review in some of the more significant line sale transactions. State and local governments, shippers and rail labor have expressed concern in some instances that the seven-day notice period does not provide for adequate comment and review in the more substantial transactions. In recognition of this, the ICC has recently announced that it will accept comment on proposals to modify the existing seven-day notice period to provide for additional review of significant line sale proposals.

The ICG believes that these concerns are valid and that the ICC's proposal is both responsive and constructive. An extension of the regulatory review process for significant transactions to, perhaps, 30 days would be reasonable, provided that it maintains the certainty of the current process. Above all, the regulatory review process must be predictable to both sellers and investors in terms of the time involved. A modified ICC review process which is extended to provide for additional notice and comment, must also be close-ended to eliminate the delay and uncertainty which would jeopardize future line sales. The ICG would support a 30-day notice and comment period for significant line sale transactions and we intend to file comments to that effect with the ICC.

Thus far there have been a number of bills introduced in the 100th Congress which, if enacted, would affect future line sales in various ways. In the Senate, S. 816, S. 1026, and S. 1040 are three measures which in differing ways would modify the existing regulatory review process for line sales. We believe that the recent ICC initiative to examine modifications to its existing process would satisfactorily address the concerns behind these bills and recommend that the Senate defer legislative action on them pending the outcome of the ICC's administrative review.

Secondly, the fact that a federal policy, either legislative or regulatory, mandating costly labor protection for these line sales transactions has not been implemented has been a tremendous boon to the creation of new regional railroads and the retention of railroad jobs and service. After considerable review, the Interstate Commerce Commission has decided not to impose labor protection on these line sales because of the chilling effect which these additional costs would have on these transactions and thereby increasing the likelihood of ultimate abandonment and total loss of all jobs on these lines. Legislation imposing labor protection on line sales passed the House of Representatives in the 99th Congress, but did not survive the conference between the House and Senate.

Just recently, H.R. 3332 was introduced in the House. This bill would require that a carrier which sells a line segment must provide a separation allowance of up to \$30,000 to each person who is neither retained by the seller nor employed by the acquiring carrier. The bill would further give employees working on a line prior to the sale the right of first hire based on seniority with the new carrier and require

that employees hired by the new regional or shortline carrier be guaranteed at least three years' employment. Moreover, the bill would appear to apply the provisions of both the Railway Labor Act and existing collective bargaining agreements to future line sales. This would be tantamount to giving rail labor a veto over these transactions and it is unlikely that further sales could proceed under the delay and uncertainty which these provisions would engender.

Mr. Chairman, we know of no other sector of the American business economy, including those such as steel and automobiles which have reduced thousands of jobs through retrenchment, which is subject to a federal mandate to provide labor protection. Why should the railroad industry, already experiencing competitive difficulties, be singled out? We at the ICG know of no more serious threat to the continued development of regional railroads and the continuation of essential local rail service than a federal requirement of labor protection on line sales. It should be clearly understood that the fundamental economics which attract outside investors to purchase and operate these regional railroads are clearly enhanced by the absence of labor protection requirements. Labor protection would adversely affect most if not all of these line sales to the point where abandonment becomes economically superior to sale of the line. Ironically, the imposition of labor protection, although intended to assist employees, would be the very element which would mandate abandonment and resulting unemployment.

It seems to us at the ICG that the underlying and common intent of these various bills is to discourage line sales. We believe that this is most unfortunate, because these oftentimes parochial and short-sided proposals, if adopted, would inevitably resurrect the less desirable alternative of abandonment. Legislation such as this would create uncertainty and increase the cost and delay in attaining regulatory approval.

Without predictable costs and timeframes, it would be very difficult for railroads and potential rail line purchasers to arrive at acceptable arrangements for these transactions. Railroads would then be forced to consider abandonment of these marginal lines, because to retain them would jeopardize the financial health of their overall system. Jobs and rail service would be lost unnecessarily.

CONCLUSION

The ICG strongly believes that the sale of marginal rail lines by Class I railroads and the corresponding creation of a new and growing system of regional railroads is one of the truly successful developments in modern railroad history. It is indeed remarkable that large amounts of new capital have been invested in a very mature industry. Clearly, this objective view by the venture capital markets must inure to the benefit not only of entrepreneurs but to the benefit of employees, shippers and the local rail service.

From the ICG's standpoint, our successful program of line sales has permitted us to achieve our strategic goal of becoming a slimmed-down, 3,000-mile core railroad much quicker than anticipated and in a manner which is far less disruptive to our employees and the communities we serve than a program of wholesale abandonments.

In addition, line sales are critical to ICG's future ability to survive. The lines sales enable ICG to maintain traffic flow by means of favorable rates and divisions on traffic from the regions which the new regional railroads serve. Hence, ICG continues in a partnership with the regional railroads and has a continuing business interest in their prosperity. On the average, ICG continues to handle 60 percent of the traffic interchanged by its contiguous regional railroads.

In summary, we believe that line sales by major railroads are a healthy and positive development for the industry, our employees, and the communities we serve and represent a far more preferable alternative to abandonments. Federal policy should continue to encourage these transactions.

STATEMENT OF DENNIS R. WASHINGTON

Mr. Chairman and members of the Subcommittee, my name is Dennis R. Washington. I am chairman and principal stockholder of Washington Corporations, as well as chairman and principal stockholder of the Montana Rail Link, Inc. I am accompanied by the Montana Rail Link's legal representatives, Milton Datsopoulos and Peter Gilbertson. I would like to thank you for the invitation to appear before the Subcommittee and express my enthusiasm for and commitment to the Montana Rail Link, and to present my thoughts on the need and importance of regional railroads, especially in Montana.

At the outset, I want to emphasize that I am not a veteran railroad operator. My experience with local and regional railroads, while direct, is brief and as yet incomplete. As you may know, Senator Exon, through Washington Corporations' work on the Calamus Dam project in Nebraska and through other major dam, mining, and large highway projects in the Western United States, my business background is principally in heavy construction.

I grew up in Missoula where my father was a construction worker, and at age 15 I also entered the building trades. I became vice president of a local construction company at 24, and started my own construction company at 29 with a small loan and one rented tractor. Today that construction company is Washington Corporations, one of the largest construction and heavy equipment companies in the western United States. Washington Corporations also holds a number of other mining, smelting, and development companies. The Montana Rail Link will be every bit as successful as Washington Corporations.

As you know, we are in the process of acquiring a portion of Burlington Northern's southern Montana line, approximately 544 miles of the main line from Huntley, Montana to Sandpoint, Idaho and approximately 286 miles of eight branch lines, to form the Montana Rail Link. Montana Rail Link also will have trackage rights from Sandpoint to Spokane, Washington.

At the time when I was approached about acquiring this portion of BN's southern Montana line, my knowledge about the line and of railroading was very limited. I certainly was aware that the line filled a very important role in meeting Montana's transportation needs and that BN has long been a presence in the State. However, I was uncertain about the merits of a small railroad and like others, I too was skeptical as to why BN would look to sell what I understood to be a healthy line. I commissioned a comprehensive study and, upon reviewing its results, requested answers to some additional questions I had. The study indicated that, although the southern line included a number of very weak and neglected branch lines, the main line, at least, was in first class condition. The study also indicated that with a modern cost structure the entire line, including the weak branch lines, could be managed and operated profitably, and that it could be marketed to reach scores of shippers and businesses that did not use rail service.

At the same time, I learned that some out-of-state interests had approached BN to acquire the line. Upon consideration, I concluded that the purchase and start up of a new carrier could be made to work. I also became convinced that what Montana did not need was another distant absentee owner of this vital rail link.

Members of the Subcommittee, I tell you this because I believe in the State of Montana and I believe in taking an educated risk on a business venture that can become a profitable operation. My beliefs are illustrated by the success of Washington Corporations' subsidiary, Montana Resources, Inc., the owner of the assets of the former Anaconda Minerals Company in Butte. The closing of the Butte copper mine in 1983 after 99 years of operation hit Montana and its people hard. Washington Corporations bought the mine after it had shut down and with a lot of hard work by the employees and the help of state and federal officials, the mine is today showing a profit, and pumping \$30 million annually back into the Montana economy. As a result, new offices and retail stores have opened in Butte, and hundreds of jobs are being created.

I intend to duplicate this success with the Montana Rail Link. The Montana Rail Link will be a first class railroad providing improved, competitive service for the shippers and businesses in Montana, Idaho and Washington and positive employee environment. I also envision the Montana Rail Link as being a positive resource for the State of Montana. With Montana recently ranked 48th in the United States economically, Montana must work to attract business and industry. I believe that BN's sale of its southern Montana line to the Montana Rail Link substantially will improve the State's business climate.

The Montana Rail Link initially will employ approximately 700 to 750 employees and serve hundreds to shippers. The management I have for Montana Rail Link has extensive railroad experience. We anticipate that in 1988 approximately 75,000 carloads will originate or terminate on MRL's line, and that more than 90,000 carloads will bridge over the lines. The Montana Rail Link will be a union railroad. As discussed below, our operating employees are covered by a labor agreement with the Brotherhood of Locomotive Engineers (the "BLE"). We intend to complete a similar labor agreement to cover our non-operating employees. We are in the process of negotiating an agreement with the Railway Labor Executives Association.

As a new carrier, the Montana Rail Link will establish its headquarters at Missoula, in the geographic center of its operations. This will bring together in Montana the rail line's marketing, operations, and management functions that previous-

ly had been segmented across the country in St. Paul, Minnesota, Overland Park, Kansas and Fort Worth, Texas.

The Montana Rail Link, like other regional railroads will be a locally based employer, a purchaser of services and supplies from the local communities and, most importantly, will learn directly and first hand of the needs of its local customers. This closer relationship with shippers and on-line communities, together with cost efficiencies the Montana Rail Link will be able to attain, creates the opportunity for our railroad to solicit new traffic within the local or regional marketing area that previously was ignored by the seller. The Montana Rail Link also can offer services to its shippers that previously were not economic for the seller to offer. In doing so, the Montana Rail Link offers the best hope for preserving and promoting branch line and main line rail service throughout its service area.

One point that I would like to stress is that the Montana Rail Link, like other short line and regional railroads, must form a partnership with its long-haul carrier. This element is essential in preserving and enhancing rail service. Although the Montana Rail Link and other railroads like it are local companies, they are not isolated depots. They also are serving many national shippers as part of a national transportation system.

Therefore, the regional railroad with its local markets must meld its interest together with those of the long-haul carrier and its national markets. In our case, MRL will have joint line rates with BN on originating or terminating traffic and anticipates joint rates with other carriers with which it will interchange. BN will publish and maintain the tariffs for its joint rates. The Montana Rail Link, however, will establish its own local rates. There will be no division with BN on these local rates.

Another area in which the long-haul carrier and the regional carrier must work as partners is in equipment supply. The selling carrier already has the equipment necessary to serve the shippers on the line being sold. The Montana Rail Link will purchase from BN approximately 45 locomotives, certain rolling stock, vehicles and other equipment. However, BN will continue to provide freight cars for traffic interchanged between the two carriers, in order to assure continued adequacy of car supply.

The phenomenon of short line and regional railroad formation, at least from what I have seen on the Montana Rail Link, is not a union versus non-union issue. Rather, from a business standpoint, the objective actually is the creation of a structure which permits an employee to be able to give a day's work for a day's pay. I am happy to say that we have met this objective most satisfactorily in our agreement with the BLE covering our operating employees, and we have every confidence that that objective will be met in the labor agreement that is being negotiated for the Montana Rail Link's non-operating employees.

Our contract with BLE is unique. Not only does it provide for an overdue restructuring of craft lines, bases of pay and certain work rules, it also breaks new ground with novel provisions that benefit employees. These include a 401(k) plan, medical, dental, life insurance and long-term disability plans, a profit sharing plan, and major new quality of life benefits. For the first time a railroad labor contract permits operating employees to make their own schedules rather than being on call seven days a week. The contract with the BLE is the best and most farsighted agreement for any regional railroad employees, better than current agreements with other regional rail carriers that have received favorable reviews, such as the Chicago, Central and Pacific Railroad and the MidSouth Railroad.

You have asked for my comments on the proposed bills that would require labor protection on transactions such as the Montana Rail Link. As I understand, it has been proposed that employees who lose their jobs would continue to receive their full salary and benefits for six years. For the Montana Rail transaction, the cost of such labor protection, according to BN's estimates, would be approximately \$300 million. This would clearly kill the deal, and destroy for all—the communities, the shippers, the State, and the employees—the benefits that I have described. While I am not well versed in the history of "labor protection," I find such labor protection to be extraordinary and, to my knowledge, unprecedented anywhere else in American industry of commerce.

You also have asked me to comment on the ICC process. Again, my experience with the ICC is limited to this transaction, but I was very pleased to learn that the Commission would act expeditiously on our exemption request, enabling us to close the transaction in a timely manner. I believe we have disclosed to the Commission all the relevant information it needs to evaluate the transaction. Moreover, I know that the Montana Rail bears the risk that the ICC can continue to examine our transaction after the deal closes. Therefore, in my opinion, legislation requiring pro-

tracted proceedings is unneeded and would not be helpful. I believe enactment of such legislation would impede the transaction from going forward.

More than 50 shippers, businesses, and communities along the Montana Rail Link share my views and have sent letters to the ICC expressing their support for the transaction. A list of the shippers who have filed letters with the ICC in support of the transaction is attached.

To my knowledge, the principal source of opposition to the transaction has been rail labor. I understand, however, that rail labor has, thus far, opposed every line sale transaction. Judging from the support we received from employees at a series of recent meetings held in communities along the line, I expect much of the opposition to diminish quickly and turn to support.

The decision to purchase the BN's Southern Montana line and begin operation of the Montana Rail Link is not a venture I have entered into haphazardly or halfheartedly. I firmly believe that Montana Rail Link will succeed, prosper, and grow; benefitting the State, the communities, and the businesses it serves and its employees. I am committed to this goal. I know that in years to come Montanans can point to the Montana Rail Link with a sense of pride in that it is an important link in our nation's transportation system and that it is their own.

NATIONAL FARMERS UNION,
Washington, DC, October 15, 1987.

Hon. JOHN MELCHER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MELCHER: On behalf of the National Farmers Union I wish to express our organization's support for your bill, S. 1040, relating to the sale, acquisition or abandonment of railroad lines.

Quite frankly Senator, de-regulation of America's transportation system (railroads, trucks and airlines) has had a devastating impact on rural America. You know all too well what has happened in your state. The same lack of service and excessive freight rates are prevalent throughout the rural areas of our country.

Although our policy statement does not address the specific issue that your bill addresses, I believe that a careful reading of our policy statement indicates the support is there.

For your information and use I am including the appropriate section of the 1987 Policy Statement of the National Farmers Union (Attachment A). Additionally, I am enclosing a reprint of an article from the September 11, 1987, issue of the National Farmers Union Washington Newsletter (Attachment B).

Senator Melcher, I respectfully request that this letter and the attachments¹ thereto be included in the official record when S. 1040 is heard before the Surface Transportation Subcommittee on the Senate Commerce, Science and Transportation Committee on October 20, 1987.

Thank you for your continuing support and efforts on behalf of America's family farmers and ranchers.

Sincerely,

ROBERT J. MULLINS,
Legislative Assistant.

MONETT, MO, September 11, 1987.

Hon. JOHN DANFORTH,
Commerce, Science, and Transportation Committee, Dirksen Senate Office Building,
Washington, DC.

DEAR SIR: I represent several trainmen who worked on the Burlington Northern Railroad Line that was allegedly sold between Monett, and Fort Smith, Ark. to Mr. Tony Hannold. We feel and can prove in many instances that the BN deliberately run off business and lied to the public and the ICC to get the sale approved.

Since the sale the BN has not done anything to help the people who lost their jobs and will not live up to agreements or even an award rendered by a chairman of a Special Board of Adjustment. Also, even our local union has made numerous interpretations of our contract that have all went against us and created even a greater hardship on us and our families.

¹ The attachments were not reproducible.

We also felt that there is collusion between BN's CEO Darius Gaskins, ICC Chairman Heather Gradison, and Mr. Tony Hannold. Mr. Gaskins because he was ICC Chairman when the BN and the Frisco merged, Chairman Gradison because she was a former railroad officer and from her public statements, and Mr. Hannold because of his relationship with Mr. Gaskins.

Most of us had between 18 and 24 years seniority on this line and not one of us who lived in Missouri was hired by the new railroad or given consideration that the officials of the new railroad promised Congressman Gene Taylor would be given.

We are therefore asking you to please support us and help get a bill introduced to amend the Interstate Commerce Act to restore employee protection on the sales of rail lines.

I am attaching ¹ a few documents to support our allegations and want to thank you in advance for your time and consideration.

Cordially yours,

T.L. PINKLEY.

¹ The attachments were not reproducible.

October 18, 1987

Senator J. James Exon, Chairman
Commerce Committee
Surface Transportation Subcommittee
330 Hart Building
Washington, DC 20510

Dear Senator Exon and Members of the Committee:

I am the attorney for the Citizens Alliance to Save the Southline (CATSS). CATSS is an unincorporated association consisting of employees of the Burlington Northern Railroad Company, and friends, family and supporters, all of whom are vitally interested in the maintenance of a viable, responsible, competitive railroad line through southern and western Montana and who are interested in reasonable and adequate job protection for railroad workers.

We are deeply concerned about the impending lease/sale by the Burlington Northern Railroad Company of over 800 miles of main line in southern Montana and northern Idaho (the "Southline"). This line was initially the main line of the transcontinental Northern Pacific Railroad. It is ironic that, after the substantial land grants given by the federal government as an inducement to that company to build and maintain the railroad, BN can now parcel out that line in small segments and sell it piecemeal without any regard to the interests of the public, the shippers, and the workers.

My main reason in writing to the Subcommittee is to inform them of the tremendous public policy void that now exists as a result of the Interstate Commerce Commission's licentious interpretation of federal railroad legislation. The Interstate Commerce Commission, which appears to be dominated by railroad interests, presently takes the position that it will exempt from public review, any sale of a line of railroad to a "non-carrier." See Ex Parte No. 392, rule making of Interstate Commerce Commission. In so exempting, the ICC has also taken the position that there is no need to impose labor protections for workers who may be displaced by the transaction, even though federal law directs that labor protection be imposed, at least on a discretionary basis, see 49 USC § 10901, and even though 49 USC § 10505(g) expressly prohibits the ICC from exercising its exemption authority "to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle." The problem is that the ICC has taken advantage of this "discretion" to issue a blanket exemption in which it never imposes labor protection.

The upshot of this miserable policy is that a railroad may sell all or part of its operation to a "non-carrier" in order to avoid its ongoing labor contracts--in the name of "efficiency." This is true apparently no matter how large the segment of railroad, how many workers will be affected, and regardless of how economically viable the railroad has been.

ICC invokes "deregulation" to justify this policy and argues that such blanket policy against labor protection is necessary to salvage railroads which are otherwise in danger of abandonment because not economically viable. While this justification may make some sense in a true "short line" situation where the extent of the railroad segment being transferred is small, the number of jobs is low, and the railroad is truly "abandonable", such justification clearly does not apply to the Burlington Northern to sell over 800 miles of its main line in southern Montana. No one has ever suggested that this line is not economically viable. BN has never even remotely hinted that the line might be in any danger of abandonment. Indeed, at a recent seminar for BN employees, BN prided itself on the profitability of its Southline.

In short, the law, as misconstrued by the ICC, contains a loophole so large that, not only a truck may be driven through it, but a whole railroad. Under the ICC's rationale, the Burlington Northern could divest its entire line to a "non-carrier" and avoid all public review regarding effects on labor and effects on competition. Court review is, of course, difficult because of the traditional deference paid administrative agencies by the court. Review by state agencies has proved to be difficult because of the traditional policy of preemption of state laws by federal laws. Railroad unions' attempts to have their collective bargaining agreements enforced through enforcement of the duty to bargain under the Federal Railway Labor Act, 45 USC § 152 et seq. have proven difficult because of the railroads' argument that the Interstate Commerce Commission's authority is exclusive and preempts application of the Federal Railway Labor Act.

Add to this the egregious problems caused by the exemption process itself. Ex Parte No. 392 provides that a "non-carrier" only has to file a notice of exemption and, only seven (7) days later, with no public disclosure, the application is automatically approved. The only administrative remedy available is a "petition to revoke" before the ICC, a very unsatisfactory remedy. In fact, as far as labor protection goes, the ICC has ruled that to obtain such protection an "extraordinary" showing must be made thereby imposing an almost insurmountable burden on petitioners.

I have carefully reviewed the history of the Staggers Act and previous railroad legislation, and I am confident that, while Congress wanted to allow the railroad industry to run more efficiently, it never intended that the ICC should abdicate its responsibilities for labor protection in such a wholesale way. Indeed, in 1960, the U.S. Supreme Court in Railroad Telegraphers v. Chicago & N.W. R. Co., 362 U.S. 330 (1960) held, in construing the pertinent legislation:

"We so construed the Interstate Commerce Act specifically on the basis that imposition of such (labor protective conditions) might strengthen the national system through their effect on the morale and stability of railroad workers generally."

I urge the subcommittee to consider carefully closing the loophole now evident in the law, which the ICC and the railroad industry have used so prolifically. Two simple changes would be appropriate. First, labor protection should be mandatory, not discretionary under 49 USC § 10901. Second, there should be formal ICC hearings and review over all major sales. Certainly, where there is a very small legitimate "short line," a speedy exemption procedure might be appropriate. But in situations where large pieces of trackage are sold or leased and major numbers of workers and shippers affected, there should be full public review.

Finally, I ask the Subcommittee to do everything appropriate to see to it that the Burlington Northern-Montana Rail Link transaction is fully reviewed by the ICC in a timely manner. As it now stands, the BN-MRL transaction is scheduled to be consummated at 12:01 A.M. on October 26. It appears that the ICC is content to take its sweet time in reviewing this sale, but the turmoil and stress on the workers is great here in Montana. As far as the workers are concerned, untimely ICC review is as bad as none at all. Thus, we ask your help in assuring speedy action.

Sincerely,

GOETZ, MADDEN & DUNN, P.C.

James H. Goetz

OCT 19 1987



INCORPORATED 100 YEARS

GREELEY CIVIC CENTER, GREELEY, COLORADO 80631 (303) 353-6123

October 16, 1987

The Honorable Hank Brown
1510 Longworth Building
Washington, DC 20515

Dear Mr. Brown:

On Tuesday, October 20, 1987, Senator Exon will be chairing an Oversight Hearing concerning the Staggers Rail Act. The Subcommittee on Surface Transportation of the Committee on Commerce, Science, and Transportation will have a hearing concerning "Short Line Sales" in Room 428 of the Hart Senate Office Building.

The Committee Against Proposed Railroad Relocation (CAPRR) is a coalition of approximately fourteen cities in northern Colorado. This Committee is vitally interested in the operation of railroads regulated by the Interstate Commerce Commission (ICC) as these operations affect the cities in northeastern Colorado. Specifically, Burlington Northern Railroad Company (BN) and Union Pacific Railroad (UP) currently operate trains either through Fort Collins to Denver or through Greeley to Denver.

In June 1986, BN announced a proposed relocation of its operations out of the city of Fort Collins. The plan provided for BN to operate trains to the northern edge of Fort Collins, thence to the east through such communities as Timnath and Windsor to Greeley and thence over UP tracks from Greeley to Commerce City. CAPRR was formed to oppose this proposed relocation because of a variety of adverse effects the cities felt would happen if the relocation occurred.

Apparently that effort to oppose the relocation was effective because BN has now announced it intends to relocate a majority of its operations through Fort Collins to a north to south line beginning at the Wyoming/Colorado border through Greeley to Commerce City. It intends to effect this change by obtaining trackage rights from UP pursuant to certain class exemption procedures authorized by the Interstate Commerce Commission as set forth in 42 C.F.R. 1150.31, et seq. As you may know those provisions allow a railroad to obtain trackage rights and begin operations seven days after the filing of the notice of exemption with the ICC.

The Oversight Hearings to be held on October 20, 1987, will deal directly with these exemption rules and how the ICC has implemented those rules and authorized the transfer of certain lines of railroads to short line carriers. Those same exemption rules apply to the acquisition of trackage rights and therefore CAPRR has a direct interest in the outcome of the Oversight Hearings.

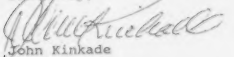
CAPRR is concerned about the operation of BN trains from Wyoming through Greeley to Commerce City because of the adverse effect such operations will have on the cities and citizens located along the right-of-way in question. The immediate effect of this change of operations will be an increase in the number of trains which now operate over the line. At the present time there are approximately four trains a day operating over the UP lines. The change of operations will mean up to twelve trains operating over this same line. Moreover, these trains will consist in large part of 104-car coal trains.

CAPRR believes such operations could cause interruption of such city services as police, fire and emergency medical services, traffic safety problems and inconvenience, travel detours for citizens between their residences and places of employment, massive costs in infrastructure improvements, significant problems regarding air and noise pollution, and adverse effects on industrial development.

Given the seven day time frame the Commission currently allows for review of trackage rights exemption notices and further given the fact the Commission simply "rubber stamps" such requests without any apparent concern about the adverse effects that could occur, the Committee feels the Oversight Hearings could be of tremendous importance to the health and welfare of the cities involved in this coalition. Accordingly, we urge you to ask a member of your staff to convey the opinion of CAPRR to the Oversight Hearings that the procedures utilized by the Commission to grant trackage rights are inappropriate and do not allow enough time for affected communities and citizens to participate meaningfully, and to support any suggested changes which would give the citizens and communities the right to have effective overview by the ICC of these of operations.

Thank you for your consideration of this matter.

Sincerely,


John Kinkade
Chairman
Committee Against Proposed
Railroad Relocation



STATE OF NEBRASKA

DEPARTMENT OF ROADS

KARL A. ORR
GOVERNOR

G. C. Strobel
DIRECTOR-STATE ENGINEER

October 16, 1987

The Honorable J. James Exon, Chairman
Subcommittee on Surface Transportation
United States Senate
428 Hart Building
Washington, DC 20510

Dear Chairman Exon:

I understand that your subcommittee will hold a hearing on about October 20, 1987, regarding short line and regional railroads and will be considering the issue of labor protection as it relates to sales of track. Short lines and regional railroads make significant contributions to today's transportation network. Because of the formation of short lines and regionals, many rail lines which otherwise would have been abandoned have been kept in service. This is true particularly in the Midwest. Although Nebraska has yet to experience any line spin-offs, we have about 2,000 miles of branch lines which are prime future candidates.

The Interstate Commerce Commission has followed a policy of not requiring labor protection when lines are sold to noncarriers. This recognizes the public interest benefits of preserving rail service and encouraging the private sector to purchase and operate marginal lines that would otherwise be abandoned. Nothing would more effectively prohibit the development of the short line and regional railroad industry than mandatory labor protection.

Thank you for considering the Department's views on this issue which is of significant importance to our transportation system and agricultural economy. I would appreciate this letter being made a part of the hearing record.

Sincerely,


G. C. Strobel
Director-State Engineer

Department of Transportation

700 Broadway Avenue East
Pierre, SD 57501-2586 605/773-3265

October 8, 1987

The Honorable J. James Exon, Chairman
Subcommittee on Surface Transportation
United States Senate
428 Hart Building
Washington, D.C. 20510

Dear Mr. Chairman:

I understand that your subcommittee will hold a hearing on approximately October 20, 1987 regarding short line and regional railroads and at that time may consider the issue of labor protection as it relates to sales of track. I wish to take this opportunity on behalf of the State of South Dakota to emphasize the importance of short line and regional carriers to South Dakota's transportation system. Most importantly, I want you to know that these carriers would probably not exist if labor protection costs had been a mandatory part of the sales.

During the last several years, South Dakota has experienced the widespread and traumatic effects of railroad restructuring. As a result, Class I railroads own and operate only 26 percent of South Dakota's rail miles. The nation's largest regional railroad, the Dakota, Minnesota & Eastern, operates as much trackage in our state as all the Class I's combined. Without short lines and regional railroads, South Dakota would be mired in a severe transportation crisis and major portions of its agricultural economy would be rendered uncompetitive.

The Interstate Commerce Commission's policy of not requiring labor protection when lines are sold to non-carriers recognizes the public interest benefits of preserving rail service and encouraging the private sector to purchase and operate marginal lines that would otherwise be abandoned. South Dakota has benefitted greatly from these sales and hopes that the subcommittee will encourage further development of the short line and regional railroad industry. Nothing would more effectively prohibit this development than mandatory labor protection.

Thank you for considering South Dakota's views on this issue which is of significant importance to our transportation system and agricultural economy.

Yours truly,



Christopher M. Randall
Director
Division of Railroads



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SUBCOMMITTEE ON SURFACE TRANSPORTATION of the 20 October 1987
Committee on Commerce, Science and Transportation
508 Dirksen Senate Office Building
Washington, D. C. , 20510-65125

HONORABLE SENATORS:

I am a Freight Conductor/Brakeman on the Southern Pacific Railroad with 21 + years seniority. I, along with a number of my fellow workers, have been involved in creating and operating a grass roots non-profit organization for over a year. That organization is AESOA. It is dedicated to educating employee stock owners about their shareholder rights and providing them a tool with which to implement the exercise of their rights. AESOA IS NOT A LABOR ORGANIZATION. Our membership includes stockholders from various professions other than those related to railroading. All members of the board of directors of AESOA make our livings actually working in our various crafts.

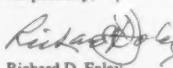
As American citizens relying on donations and volunteer work, we have been exercising our rights as shareholders. We have proven to ourselves that we do have enormous potential power in these rights and that it expands as we lawfully exercise them. By accepting responsibility and acting, we have demonstrated that in spite of the inherent give and take we can make a positive difference for ourselves and our fellow workers.

In regards to the up coming hearings on the ICC, we would like to share with you a copy of the position paper we submitted to the ICC on the issue of the proposed merger of the Sante Fe & Southern Pacific Railroads. Additional material is also enclosed. Our position paper raised a point which we feel is crucial to the proper evaluation and review process by which the ICC reaches its decisions. To our knowledge, the ICC has done nothing to follow up on this point. The universal reason corporate managers cite as the rationale for the divesting, sale or abandonment of operating properties, is that it is in the interest of its shareholders. If the employees of such a company are in fact major shareholders, it would not be an even exchange for them to trade the certain loss of their jobs for the "possible-maybe" few points increase in the value of their stock. If such is the case then the argument upon which the proposal is presented by corporate management to the ICC is fallacious and it is not the shareholders who will profit but other parties. If the interest of those "other parties" out weighs the interests of the public, shippers and employee owners which the ICC is charged with protecting, those parties should, at the minimum, be identified. This can only be established if the ICC is required to develop accurate data as to the degree of employee ownership.

The rail industry, in particular, has a long history of its workers buying stock in their companies. Often, the ownership of this stock remains within railroad families for generations. There are several areas of ownership: (1) IRA's have been used by thousands of rail workers to accumulate stock in their companies; (2) stock purchase via pay-roll deduction; (3) stock purchased in personal brokerage accounts; (4) ESOPs. All these areas of employee ownership should be assessed, and in each case presented to the ICC. It has been our experience that corporate management, for its self preservation, does not want this knowledge to be public.

The employees of Southern Pacific have an ESOP with 10's of millions of dollars in stock in the parent company-Santa Fe Southern Pacific Corporation. Part of the proposed purchase plan by the Rail Labor Executives Association on behalf of SP employees will be a leveraged ESOP. This will be a first within the rail industry. There are two crucial points I wish to raise here: (1) that any evaluation by the ICC which does not examine the degree of current employee ownership of the company in question is doomed to be slanted at best, and outright false at worst (2) that the current law, as it applies to ESOPs of companies whose stock is publicly traded, requires full pass through of all shareholder rights with the exception of the transference of proxies. While no such requirement is placed on ESOP of private corporations, this disparity is unsupportable and could increase the failure rate of companies which must undergo a transformation in attitude to succeed. We can not believe that congress's intent in creating the ESOP program was in any way to allow such a seed of disaster to be lodged in the breast of the ESOP concept. Action needs to be taken to address both these points.

Respectfully,


Richard D. Foley
Chairman, AESOA